The following are comments received during the public and agency scoping process for the Columbia River Management Program Environmental Impact Statement. The comment period was open from May 5, 2006 through June 5, 2006. During that period, comments were accepted via regular mail and email. In addition, both hand written comments and transcribed verbal comments were accepted at four public open houses held during the scoping period. The public open houses were held in Wenatchee, Colville, Moses Lake, and Kennewick.

The comments received are organized below follows:

A) Comments received via regular mail,

B) Comments received via email,

C) Hand written comments received at open houses, and

D) Comments transcribed at open houses.

SIERRA CLUB
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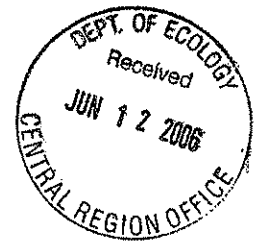
June 5, 2006



Derek Sandison
Department of Ecology
15 W. Yakima, Suite 200
Yakima, WA 98902

Re: Columbia River EIS scoping comments

Dear Mr. Sandison,

Sierra Club is an international conservation organization dedicated to the protection and enjoyment of planet Earth. In Washington, Sierra Club has more than 30,000 members, many of whom hike, bike, paddle, hunt and fish in the many waterways of eastern Washington and the Columbia River basin. We thank you for the opportunity to provide comments on the new Columbia River water program.

The Columbia River Water Management Program seems pretty directly headed toward the construction of new dams in the Columbia basin. Sierra Club generally believes this to be bad policy. The Columbia suffers from significant environmental problems associated with existing dams and reservoirs. Wouldn't it be better to solve these problems before adding more into the mix?

It is critical that the Environmental Impact Statement for the Columbia water program thoroughly analyze the impacts associated with a new dam building program, including the multiple, cumulative impacts that could arise from adding new facilities into an already heavily dammed river system. Such impacts include:

- loss of terrestrial habitat, including the ever-shrinking shrub-steppe, and dependent species
- water quality degradation associated with dams, including temperature, dissolved oxygen, dissolved gas and accumulation of toxic chemicals in sediments
- loss of recreational and hunting & fishing sites
- impacts associated with increased agricultural development, including use of toxic farm chemicals

It is also important that the EIS examine a complete range of alternatives to a dam building program, including:

- aggressive water conservation and efficiency programs
- use of pricing to control demand – in other words, requiring farmers to pay for the water they receive from the program
- using the program to support local farms and sustainable farming practices

The EIS must also focus on instream protection goals, and examine a full range of methods to improve flows in the Columbia River for water quality and salmon survival, including:

- use of water markets and trust water rights to improve instream flows
- matching public funding of the program to the public benefit received from the program
- enforcement against illegal use and waste of water
- protecting and enhancing tribal treaty rights to water and fish

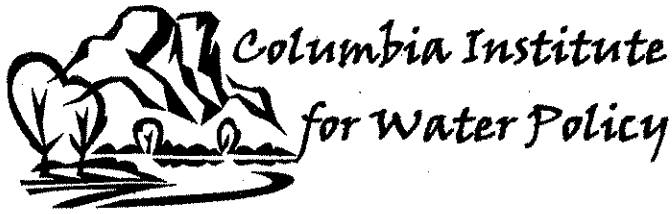
Sierra Club also endorses and joins in the scoping comments submitted to you by the Center for Environmental Law & Policy.

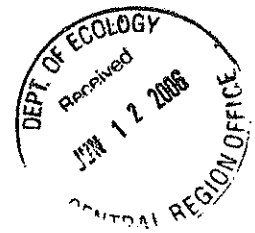
We look forward to the Department of Ecology's issuance of a scoping document that creates a strong foundation for a thorough examination of the policies and impacts of the Columbia water program.

Sincerely,

Beckett Stanley
Conservation Chair
Cascade Chapter

John Osborn, MD
Conservation Chair
Northern Rockies Chapter





June 5, 2006

Derek Sandison
Department of Ecology
15 West Yakima Ave. Suite 200
Yakima, WA 98902-3452

Re: Scope of EIS for Columbia River Water Management Program

Dear Mr. Sandison:

Thank you for the opportunity to provide comments on the scoping effort for the Programmatic ("nonproject") Environmental Impact Statement (PEIS) for the Columbia River Water Management Program (CRWMP). It is the mission of the Columbia Institute for Water Policy to promote the equitable and sustainable use of the transboundary water resources of the Columbia watershed. These comments are directed toward "bigger picture" issues that arise from the CRWMP and its authorizing legislation, House Bill (HB) 2860.

The NAS Report

In 2004, in response to a request from the state of Washington, the National Academies of Science issued a report on water management in the Columbia River.[1] The report forwards several recommendations, two of which are particularly relevant to the PEIS effort:

(1) The hydrology of the Columbia River has been dramatically altered by dams, and problems of low flows and high temperatures are adversely affecting salmon migrations. Therefore, new water rights, if any, must be flexible and conditioned for curtailment when stream flow is inadequate to meet the needs of migrating fish.

(2) The waters of the Columbia are owned and managed by multiple jurisdictions. Decisions concerning new water rights should be considered with a view toward the entire basin, including system-wide equities.

While it appears that the legislative directives of HB 2860 have largely ignored the NAS recommendations, it is nonetheless possible for the Department of Ecology to consider and encompass information that speaks to the NAS study.

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[1] National Research Council, Managing the Columbia River: Instream Flows, Water Withdrawals, and Salmon Survival (National Academies Press 2004).

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TRANSBOUNDARY ISSUES

Unilateral efforts in the Columbia watershed are becoming obsolete. It is critical that efforts to inventory water supply and demand look beyond the state line and consider both water supply and water management in adjacent jurisdictions, including British Columbia, Idaho, and Oregon, as well as by the numerous Indian Tribes and First Nations that exercise management over Columbia basin waters.

The PEIS provides the opportunity to examine physical, political and economic relationships between the multiple jurisdictions as well as the impacts to Washington of alternative and potentially competing future water scenarios. These scenarios include, for example, changes in reservoir management at the major federal dams (throughout the system) as mandated by Endangered Species Act requirements, changes in the U.S.-Canada treaty on Columbia River water deliveries, and possible unilateral decisions by Idaho and Oregon to allocate water from the Snake or Columbia Rivers (akin to Washington's unilateral actions based on HB 2860). Future water availability could be radically different, depending on the actions of our neighbors. The PEIS is the appropriate document to guide the evaluation of differing scenarios that may affect water availability in the Columbia basin.

SUSTAINABILITY ISSUE

- **The Soft Path for Water Management**

The "soft path" for water management focuses on demand management and innovative approaches to meet water needs. In this approach, the deliver of water is viewed as a service and not an end unto itself. Soft path water management includes a variety of practices including water efficiency programs (especially, in the agricultural setting, the use of drip and other micro-irrigation techniques), appropriate pricing (including the abolishment of subsidies), "green water" programs (see next section), re-allocation, re-use, etc.[2]

Soft path water management is founded on on "backcasting," i.e., defining sustainable and desirable future water scenarios and working backwards to the present, identifying programs and policies that are needed to achieve the goals. In this process it is critical to not overstate the baseline for future water needs.

The CRWMP PEIS represents an exceptional opportunity for the state of Washington to develop a soft path water program as an alternative to development of yet more expensive, subsidized water infrastructure. SEPA requirements for development of alternatives in the EIS process supports the approach of analyzing a demand-management program as an alternative for development new water supply in the Columbia basin.

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[2] Wolff, G. and P.H. Gleick, "The Soft Path for Water," in The World's Water 2002-2003 (Island Press 2002).

- **Sustainable Agriculture**

Columbia basin irrigators enjoy substantial subsidies, economic and environmental, in the delivery of water to their farms (see "Subsidies" discussion, below). The Columbia River Water Management Program represents an opportunity to depart from a subsidy-based approach to water management, and instead promote and support sustainable agriculture. A "sustainable agriculture" alternative should be analyzed in the PEIS.

Environmentally sustainable agriculture includes practices that minimize or eliminate chemical use, protect habitat, and reduce water usage. Water sustainable practices include concepts such as "green water" credits that reward the use of water-conserving, ecological soil management practices, the use of drought-tolerant crop species, appropriate fallowing, etc.[3] A host of activities may be employed to improve irrigation water productivity, including technical, managerial, institutional and agronomic techniques that promote appropriate soil, plant and water management.[4]

By promoting sustainable agriculture and attendant water use practices, the CRWMP could potentially meet its goals of finding new water supplies and protecting instream flows, without spending hundreds of millions (and ultimately, billions) of dollars on new water infrastructure. Such a program would have added benefits as well, including reducing the release of toxic chemicals into water and air media, protecting wildlife and habitat, and supporting smaller-scale, locally-based agricultural operations. The PEIS should carefully examine the alternative of using CRWMP funding and policies to promote sustainable agriculture.

- **Ground-Surface Water Connectivity**

While HB 2860 defines the Columbia mainstem as surface waters and groundwater within 1 mile of the mainstem, in fact the Columbia River is fed by groundwater from throughout the Columbia Plateau. As the figure below illustrates, even the deep basalt aquifers are hydraulically connected to the River, a fact that is confirmed in the extensive Columbia regional aquifer system (RASA) studies conducted by USGS.[5]

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[3] See, e.g., Sustainable Agriculture Research & Education, Smart Water Use on Farm & Ranch (Feb. 2006) at http://www.sare.org/publications/water.htm.

[4] Postel, S., Pillar of Sand, Table 8-1 (Menu of Options for Improving Irrgation Water Productivity), p. 172 (W.W. Norton 1999).

[5] Figure from Vaccaro, J.J., Summary of Columbia plateau regional aquifer system analysis, Washington, Oregon & Idaho, Prof. Paper 1413-A, (USGS, 1999). See http://water.usgs.gov/cgi/rasabiblio/?category=17&form=introduction for a bibliography of the approximate three dozen papers published as part of this study.

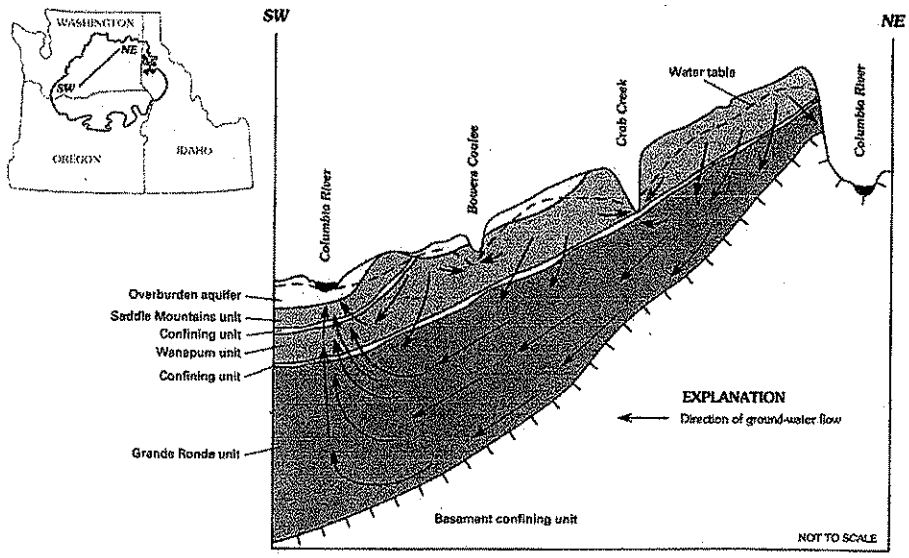

FIGURE 21.—Generalized ground-water-flow pattern in the Columbia Plateau aquifer system.

It is a requirement of state law and policy that the Department of Ecology fully consider the interrelationships of ground and surface waters when allocating and managing water resources. See RCW 90.54.020(9) (note mandatory language) and the 1998 "Capture Report."[6] To fully assess the environmental impacts of CRWMP activities, the PEIS must acknowledge and analyze the hydraulic connectivity of ground and surface waters throughout the Columbia basin.

- **Storage Reservoir Water Quality Impacts**

It is an unfortunate fact that the discharge of solar-heated water from reservoirs into river systems can significantly harm ecosystems and wildlife. Dam and reservoir systems in the Columbia basin have caused significant water quality degradation. These problems are abundant in the Columbia, one of the most heavily dammed watersheds in the world, and many reaches of the river are listed on Washington's "303(d) list" of impaired waterbodies for temperature and DO.[7] In addition, toxic sediments are building up behind most if not all of the dams within the Columbia system.

Solutions for these problems are not in sight. It is therefore something of a surprise that the state would embark upon a program to construct additional dams that are likely to exacerbate water quality problems. The assumption that "more flow is better," regardless of the source, is too simplistic and fails to address the fundamental harms that dams are causing within the Columbia ecosystem.

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[6] Washington Dep't of Ecology, Report of the Technical Advisory Committee on the Capture of Surface Water by Wells: Recommended Technical Methods for Evaluating the Effects of Ground-Water Withdrawals on Surface Water Quantity (August 1998).

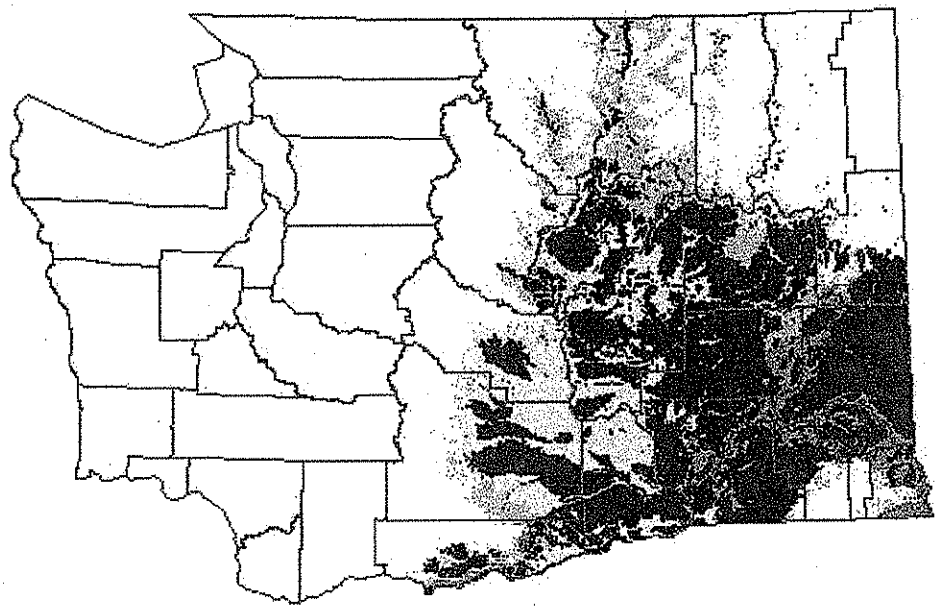
[7] Washington Dep't of Ecology, Water Quality Assessment (303(d) and 305(b) Report), 2002-2004, at http://www.ecy.wa.gov/programs/wq/303d/2002/2002-index.html (query Columbia River, Category 5).

The PEIS provides an opportunity to look watershed-wide at the water quality harms that dams are causing on the Columbia. As a part of its alternatives analysis, the PEIS should provide both baseline data regarding the water quality harms associated with water storage reservoirs and closely analyze the potential for additional water quality impairment, including cumulative effects, which new dams will bring. To the extent that CRWMP contemplates construction of dams and reservoirs in tributaries of the Columbia, similar analysis should be conducted for those sub-basins.

- **Storage Reservoir Terrestrial Impacts**

Water dam & reservoir systems proposed for off-mainstem sites will dramatically alter the terrestrial ecosystems where they are located. Where reservoirs are located, the terrestrial ecosystem will be destroyed. Where new irrigated farmland is developed, terrestrial ecosystems will also be altered and possibly destroyed.

In the Columbia basin, the once-predominant natural terrestrial shrub-steppe ecosystem has been substantially altered and destroyed due to irrigated agriculture.[8]



(The above map image shows the current extent of shrub-steppe lands in Washington (in light shades) along with lands converted to agriculture or development (blue).)[9]

Most of the dam sites analyzed in the December 2004 Storage Options report would be located in shrub-steppe areas. The PEIS provides an opportunity to analyze the basin-wide loss of shrub-steppe habitat and dependent species and examine how further destruction of this ecosystem type would affect species decline and extinction, loss of habitat connectivity, and other factors.

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[8] WA Dep't of Fish & Wildlife, Status of Washington's Shrub-Steppe Ecosystem (August 1996).

[9] From Wooten, G., "Shrub-Steppe Conservation Prioritization in Washington State," (Kettle Range Conservation Group, @2002), http://www.kettlerange.org/steppeweb/.

For example, Washington DFW recently released a recovery plan for sage grouse, a state-endangered species (and candidate for ESA listing) that depends on shrub-steppe habitat. WDFW notes that "[m]ajor threats to the Washington population include . . . continued conversion of shrub steppe to cropland or development."[10] There are several other species of flora and fauna dependent on shrub-steppe (including pygmy rabbits and Ute's ladies tresses). A thorough review of the impacts of development of new water infrastructure and the development of new cropland is necessary and appropriate.

The PEIS should examine historical loss, economic and intangible values of the remaining intact ecosystems, and the benefits these areas provide for both wildlife and human recreational (i.e., hunting and fishing) and other non-consumptive users of the resource.

- **Columbia River Instream Flows**

HB 2860 offers the legislative judgment that the removal of water from the Columbia need only be mitigated during July and August. Unfortunately, this judgment is inconsistent with other scientific assessments of Columbia River instream flow needs, including in the NAS report cited above and, perhaps most importantly, recent federal court decisions invalidating ESA biological opinions for dams on the Columbia and Snake Rivers.[11]

The implementation of the CRWMP, at both state and federal levels, has implications under the Endangered Species Act. The PEIS should examine the potential environmental impacts associated with removing water from the Columbia without mitigation during the months outside July and August. The PEIS should also examine the policy implications and environmental and economic costs associated with violation of the Endangered Species Act by the state of Washington, as that appears to be what the state Legislature has directed.

The State of Washington should also revisit the Columbia River instream flows established in WAC Ch. 173-563. Most fisheries agencies have determined that these flows are inadequate. The PEIS should lay the groundwork for establishing new flows that reflect scientific understanding and sound principles for management of the river.

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[10] See, for example, WA Dep't of Fish & Wildlife, Final Sage Grouse Recovery Plan (May 2004), http://wdfw.wa.gov/wlm/diversty/soc/recovery/sage_grouse/index.htm.

[11] National Wildlife Federation v. National Marine Fisheries Service, U.S. District Court No. CV-01-640-RE, Opinion and Order (May 26, 2005) and Opinion and Order (Dec. 29, 2005); American Rivers v. NOAA Fisheries, U.S. District Court No. CV-04-0061-RE, Opinion and Order (D. Ore., May 23, 2006).

EQUITY ISSUES

- **Fish & Wildlife Equities**

HB 2860 sets forth the twin goals of providing water for both off-stream and instream uses. The focus of the PEIS scoping notice, however, leans toward analysis of activities associated with off-stream agricultural water supply. In order to meet both the spirit and mandate of the statute, the PEIS should provide thorough discussion of how instream flows in the Columbia will be protected and restored. Equal emphasis on instream flow programs makes particular sense given the near-term instream flow problems, noted above, that are being litigated in federal court.

- **Watershed Equities**

The Scoping Notice is ambiguous on this point, but it appears that the state is considering allowing water conservation savings in the watersheds to be transferred to and serve as mitigation to offset water use out of the mainstem of the Columbia. Using this approach, the tributary watersheds will subsidize mainstem irrigators.

The PEIS should thoroughly examine the policy, economics and general wisdom of allowing mainstem Columbia water users to utilize saved water from outside the mainstem. Most of the Columbia tributaries are closed to new appropriations and many of the watershed planning units in eastern Washington are themselves searching for mechanisms to meet demand within the watershed. Transfer of conserved water and/or trust water rights to the Columbia mainstem may deprive the tributary watersheds of the means to satisfy their own future water needs. This issue should be thoroughly discussed in the PEIS.

- **Water Subsidies**

Current water management in the Columbia Basin Project represents a tremendous subsidy to farms that receive agricultural water from the project. These subsidies, as illustrated in the table below, are some of the largest in the United States.[12] Note that this table does not reflect environmental subsidies to water users.

Figure 1 Estimated cost allocations for the Columbia Basin Project at 540,000 acres

	Who Pays	Period	Yearly Cost (million 1990s $)
Interest on capital debt for irrigation facilities, at 6%	Federal taxpayers	1960-2020	48.0
Repayment of capital debt for irrigation facilities			
Farmers share	Landowners	1970-2020	1.4
Regional share	BPA ratepayers	2010-2020	74.0

[12] See, e.g., Whittlesey, N.K., W.R. Butcher and M.E. Marts, "Water Project Subsidies; How They Develop and Grow," Illahee, Vol. 11, Nos. 1&2 (1995).

Pumping costs and lost hydropower	BPA ratepayers	From 1970	98.0

From Whittlesey, N.K., W.R. Butcher and M.E. Marts, "Water Project Subsidies: How They Develop and Grow" (*Illahee*, Vol. 11, Nos. 1&2 (Spring-Summer 1995)

The delivery of water, not simply for free, but significantly below cost, creates artificial demand. As discussed above, it may be possible, through policies and practices that promote a soft path program and sustainable agriculture, to achieve significant water savings and supply at substantially lower cost than building new dams and reservoirs.

It is essential that the PEIS examine the relationship between subsidized water and demand. To date, the Columbia River Water Management Program represents yet another subsidy program, with $16 million underwriting administrative activities and a $200 million bond to be paid (principal and interest) by Washington taxpayers. Most parties agree that $200 million would be but a down payment on any major dam building program.[13]

In particular, the PEIS should examine the alternative of using pricing mechanisms (ie, requiring irrigators to pay the costs of water delivered to the farm gate) as a demand management approach. Hard questions should be asked, including whether it is either appropriate or economically sensible to continue providing subsidies. If the state of Washington does not offer free/subsidized water to irrigators, what is the effect on demand?

As a related issue, it is critical that the benefits of irrigated agriculture not be over-stated. Two recent studies of Columbia basin agricultural economics, one led by Daniel Huppert (UW 2004), and one conducted by Holland & Battracharjee (WSU 2005) have over-stated the economic benefits of irrigated agriculture, have been consistently misrepresented by third parties, or both.[14] The PEIS and subsequent analysis as part of the CRWMP will necessarily rely on economic analysis to determine directions (as this letter advocates). Such analysis must be credible.

- **Social Equities**

As the discussion of subsidies illustrates, substantial benefits of the Columbia Basin Project have been conferred on certain parties. However, equally significant detriments were and continue to be shouldered by Native American and First Nations peoples and tribes. A second problem of social equity is associated with the employment of immigrants as a labor source for farms in the Columbia basin, where wages are low and serve as a barrier to development of land tenure by immigrant populations. Access to water is an important part of socio-economic improvements in sectors of society where poverty is endemic.

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[13] See, for example, Columbia River Mainstem Storage Options, Washington at Table 1-3 (Pre-Appraisal Level Cost Estimates) (MWH, Dec. 2005).

[14] See, e.g., Griffin, R.C., Review of the Columbia River Initiatve Cost-Benefit Analyses (American Rivers 2005); Williams, G.W. & O. Capps, "An Assessment of Future Markets for Crops Grown Along the Columbia River: Economic Implications of Increases in Production Resulting from New Agricultural Water Rights Under the Columbia River Initiative," (American Rivers 2005).

What social policies are intended by the CRWMP program? Is it Washington's goal to maintain and cement the status quo? Or could this program be used to cure some of this historic ills caused, wittingly or not, by past water policies?

The PEIS should examine the relative social and economic equities, harms and benefits associated with focusing the provision of water via the CRWMP program to differing categories of potential users. In the earlier era, water subsidies created by the Columbia Basin Project were justified by a national economic policy to promote small family farms during and after the Depression of the 1930s. These policies no longer obtain for the same classes of citizens who benefit from them. Yet it is the existing water users who are most likely to benefit again unless deliberate decisions are made to move the CRWMP program in other directions. The PEIS is the appropriate document to consider these questions.

PROJECT ISSUES

- **Piece-Meal Approach**

At present, water development in the Columbia River basin feels like a three-ring circus. There are multiple projects, connected directly or indirectly, some included in the PEIS Scoping Notice, others not. Some of the projects (e.g., ECBID transfer of water to Odessa Sub-Area farms) are already underway. Others are being studied by the U.S. Bureau of Reclamation. For some it is not clear where the environmental analysis is or will be done. There is serious potential for piece-meal review of the environmental impacts associated with water development from the Columbia and it appears, in violation of SEPA requirements, that do environmental analysis may be conducted only after certain decisions are made. The PEIS, no later than the draft stage, identify and relate these various projects to each other and undertake to ensure that improper segmentation does not occur.

- **Potholes Alternative Feedroute**

The Scoping Notice identifies expansion of the Potholes feedroute. There is much confusion about this project. The Bureau of Reclamation has claimed that the current expansion is intended only to offset ECBID conservation savings elsewhere that have caused diminishment of return flow to Potholes. But feed route expansion will also serve expansion of the Columbia Basin Project into the "second half," should that occur. Which is it? Where is the complete environmental analysis being done?

- **Moses Coulee storage**

It appears that Moses Coulee is being targeted as a likely site for a water storage project. The Storage Options report cited above identifies Moses Coulee as the largest and cheapest storage site. Ecology has followed up with a $198,000 watershed planning grant to Foster Creek Conservation Irrigation District to perform studies for storage projects in that area. This activity has arisen to the level of a "project action" and requires environmental analysis.

- **Odessa**

PEIS should examine the alternative of returning all or some of Odessa Sub-Area (OSA) irrigated farms to rain-fed/dryland agriculture, a common and successful

practice in the region. It is likely to be less expensive (perhaps much less) to assist farmers in transitioning to dryland cropping than to bring water to much of the OSA.

The PEIS should also take a hard look at the causes of water declines in the Odessa aquifers, including the longstanding problem of illegally constructed wells that are causing water to cascade from upper to lower aquifers.[15] If OSA farmers are unable or unwilling to bring their wells into compliance with state law governing well construction and waste, this raises questions about the necessity and propriety of providing expensive alternative water supply solutions to the area.

- **ECBID water transfers to Odessa**

Where is the environmental analysis for this project? To what extent have public monies funded the water conservation projects? To what extent is the public benefiting from this project? What is the basis for these policies and how are they consistent (or not) with HB 2860?

- **CSRIA Proposed VRA**

Voluntary Regional Agreements represent a potential new legal mechanism for allocating water resources in Washington. It is arguable, from the structure of the statute, that the Legislature intended to do away with the rules of prior appropriation in processing VRAs. This would be a dramatic change in water resource practices and a step forward that requires rulemaking based on thoughtful legal and policy guidance.

Ecology recently issued a statutory interpretation of this complex law in an FAQ.[16] Not only is this an inappropriate method for establishing agency policy, but the FAQ appears to misrepresent HB 2860's requirements for consultation and water rights. Most importantly, it jumps the gun. How can the agency fairly and properly develop policy and rulemaking on VRAs if it is issuing ad hoc Q&A papers even before the scoping period has closed? Public process and SEPA requirements are not served by this approach.

This leads to a second point. Ecology cannot fairly evaluate the VRA proposal submitted by the Columbia-Snake Irrigators Association (CSRIA) simultaneous with its development of general program policy on VRAs. VRA policy is less likely to be broadly based and neutral if it is associated with a proposal advocated by a water user. Instead, the agency is likely to gear its analysis toward the CSRIA proposal and miss the opportunity to think more openly and broadly about the opportunities for VRAs (including to promote sustainable agriculture and water use practices, as discussed above.)

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[15] Luzier, J.E. and R.J. Burt, Hydrology of Basalt Aquifers and Depletion of Ground Water in East-Central Washington, WA Dep't of Ecology Water Supply Bulletin No. 33, at pp. 2, 11, 16 (1974); Luzier, et al., Ground Water Survey, Odessa-Lind Area, Washington, WA Dep't of Water Resources Water Supply Bulletin No. 36 at p. 5 (nd).

[16] See "Frequently Asked Questions about the Columbia River Water Management Program" (WA DOE No. 06-11-014, May 2006).

As the scoping notice acknowledges, the CSRIA VRA will require its own SEPA process. That project-level analysis should follow, not accompany, program policy making on this topic. Moreover, the CSRIA VRA proposal is so lacking in detail that it is not appropriate for SEPA review at this time. Ecology should send it back and ask for information regarding the proposed mitigation (see also next section), public funding, the basis for the $10/acre-foot payment proposal, etc. It is not possible to provide meaningful comment on this document in its current form.

- **Water Right/Use Mitigation**

Ecology has issued a number of water rights in the past decade based on mitigation to offset the depletion to aquifers and rivers caused by new use.[17] Water rights mitigation has been ad hoc, without guidance or standards, and in some cases extremely controversial. (The Battle Mountain Gold and CSRIA $10/acre-foot proposals are examples).

The PEIS provides an opportunity for the agency to impose much-needed structure on the chaos of the mitigation program – action that would help ensure that new water users do not harm source waters or existing water right holders. This is especially important for development of VRA policies, VRAs apparently being based on the concept of mitigation. VRA proponents, and the public, are entitled to know what is acceptable and what is not in advance of proposal review.

Even the most basic guidance is lacking at this time, something the PEIS and rulemaking should address. At a minimum, the agency should establish basic rules for mitigation, along the lines of WAC 173-201A-450 (Water Quality Standards Offsets). However, it would serve the public and water users to identify in detail the types of mitigation practices that are acceptable and the level of protection that the public can expect for the Columbia River through implementation of mitigation rules in VRAs and other water right decisions.

- **Water Efficiency Practices**

As with VRAs and mitigation, it is time for water efficiency practices to be established via rulemaking and become binding and mandatory on all water users. Given the extraordinary expense of developing new water supply infrastructure, it is only rational to look to water conservation as the first option for obtaining "new" water supply. Consistent standards across the Columbia basin are necessary to provide a basis for analysis of proposal, to ensure equitable treatment of all parties, and to properly enforce against wasteful water use. The Department of Ecology's recently adopted irrigation efficiency guidance is a good first step.[18] However, the guidance is not mandatory and does not establish a baseline for consistency in decision making.

The PEIS should set forth the foundation and analysis for establishing basin-wide conservation standards. The PEIS should also examine approaches and programs

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[17] See "Mitigation Measures Used in Water Right Permitting" (WA DOE, April 2003).

[18] WA Dep't of Ecology, Determining Irrigation Efficiency and Consumptive Use, GUID-1210 (October 2005). Unfortunately, the guidance document does not fully describe the law of "reasonable efficiency" as set forth in Grimes v. Ecology, 121 Wn.2d 459 (1993).

that "push the envelope" in terms of mandating and providing incentives for aggressive and effective water conservation. In other words, rather than passively await proposals, the PEIS should incorporate a conservation alternative that projects maximum efficiency and water savings throughout the basin and proposes a path for the state to make that future happen.

- **Trust Water Rights**

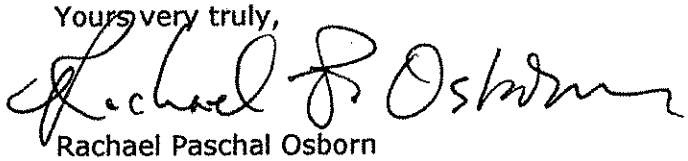
HB 2860 establishes that water savings from conservation activities may be placed into trust water rights. That water should then become available to serve either of the twin goals of the statute, off-stream or instream purposes. Where water savings are obtained through public funding, the public should benefit accordingly. Providing private parties with water savings as a mitigation mechanism is not a public benefit.

The PEIS should clarify that saved water is available for both instream and out-of-stream uses and provide a basis for analyzing the relative economic and environmental benefits of each, including proper assignment to public and private sectors.

Conclusion

Thank you for the opportunity to provide comments regarding the Columbia River Water Management Program. I would be happy to provide copies of any of the materials cited in this letter should they not be available in the Department of Ecology's files.

Yours very truly,



Rachael Paschal Osborn
Executive Director

Columbia-Snake River Irrigators Association
2006 Water Policy Memorandum

DATE: May 10, 2006

TO: Mr. Derek Sandison, CRO, WADOE

cc: Mr. Jay Manning, Director, WADOE
Mr. Gerry O'Keefe, Coordinator, Columbia River Water Management Program
And Interested Parties

FROM: Darryll Olsen, Ph.D., CSRIA Board Representative

SUBJECT: CSRIA Initial Recommendations and Comments on:
EIS Scoping for Columbia River Basin Water Management Program[1]
(with attachments for hard-copy distribution)

The following CSRIA recommendations and comments focus on the recent WADOE request for comments on scope of EIS (SEPA compliance) for the state's new Columbia River Water Management Program. The state is proposing to proceed with a programmatic environmental impact statement (EIS) to address SEPA compliance for actions under the new Columbia River water management legislation[2]

The CSRIA recommendations address the approach taken by the state to achieve SEPA compliance, including the need, context, and utility for preparing a new programmatic EIS; and how the programmatic EIS will affect a timely and efficient implementation of key features of the new legislation, and the (draft) proposed Voluntary Regional Agreement (VRA) submitted by CSRIA to WADOE.

Reconsider your proposed SEPA compliance approach to better recalibrate the procedural and technical requirements of SEPA to the implementation of ESSHB-2860, and to streamline the SEPA compliance process.

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[1] Determination of Significance and Request for Comments on Scope of EIS for Columbia River Basin Water Management Program, and Attachment A, Issues to be Addressed in EIS, May 5, 2006.
[2] ESSHB-2860, 2006 legislative session.

- The state has already issued a draft programmatic EIS on the Columbia River Mainstem Water Management Program[3], and that document should serve as the foundation for the existing SEPA compliance process.

- Rather than issue a new Draft EIS, instead issue a Supplemental EIS to the previous draft, and succinctly focus the supplemental document on what are clearly "programmatic omissions or impacts" relative to the (new) content of ESSHB-2860. The existing programmatic EIS does adequately address, and provides full discloser for, the primary programmatic impacts: new water withdrawals from the Columbia River system (this is clearly addressed within the existing draft programmatic EIS). A carefully, concisely scoped Supplemental EIS should be followed with an agency Record of Decision completing the SEPA review process in a timely manner.

- Recognize that your proposed programmatic EIS is dealing with "apples and oranges" relative to the types of "projects and programmatic actions" currently identified within the Determination of Significance and Attachment A, scoping documents: 1) the proposed EIS will be inadequate to address specific (large-scale) projects; and 2) it will be unnecessary to apply the programmatic EIS to other actions/projects that already receive SEPA compliance review.

- Specific, large-scale Projects identified within the scoping documents--such as changing Lake Roosevelt Reservoir elevations or developing alternative feed routes for Potholes Reservoir re-regulation—will, undoubtedly, require a full project EIS. Thus attempting to apply adequate SEPA compliance coverage via a programmatic EIS will be an inappropriate application of the programmatic EIS and direct resources/time away from preparation of the needed project EISs. Moreover, any cumulative impacts stemming from the joint projects can be addressed within specific project EISs, following conventional practices for EIS preparation.

- Conversely, activities such as issuing new water rights from the mainstem Columbia-Snake River system, including related mitigation actions, or implementing conservation measures, already receive SEPA compliance through an environmental (SEPA) checklist review, where almost all permit and conservation measure actions receive a determination of non-significance (DNS).

- Futher, as it is explicitly acknowledged within ESSHB-2860 that full mitigation is required for the issuance of new water rights under the management program, it would be inappropriate to assume that the issuance of new water rights will lead to a significant adverse impact to the environment—the primary assumption already asserted by the DS notification.

- And finally, it is unclear why some administrative actions are even being considered for SEPA compliance and EIS review. For example: how conservation measures will be

[3] WADOE-WDFW, DRAFT EIS, Columbia River Mainstem Water Management Program, Olympia, WA, December 2004, 04-11-031.

evaluated, how water use is measured, how the trust water rights program is managed, how WADOE will decide to sign a VRA, and several other items identified within the scoping document. These types of administrative/assessment actions are already allowed for and administered under RCW and WAC—why do they now require additional SEPA compliance review? Should WADOE also require an EIS for the preparation of a programmatic EIS?

Do not delay the implementation of key features within ESSHB-2860, including the review of the Draft CSRIA and Ecology Voluntary Regional Agreement, during any programmatic EIS process—move expediently forward.

- The CSRIA recommends that all critical path actions under ESSHB-2860 should be implemented, with or without a programmatic EIS process, so that new Columbia-Snake River system water rights are issued by July 1, 2007.

- The CSRIA specifically recommends that the ESSHB-2860 consultation process be immediately commenced for the Draft CSRIA and WADOE VRA; any concerns raised by the consulting agencies, tribes, and public can be addressed thereafter by WADOE as part of its Record of Decision for accepting the VRA (and including within any supplemental EIS or as part of the overall public involvement process for the implementation of the Columbia River Water Management Program).

- We are concerned that there appears to be some confusion within WADOE (or we are confused) regarding the need for the completion of the programmatic EIS process prior to initiating the CSRIA-WADOE VRA consultation. In a May 1, 2006, CRO-WADOE letter to existing water right applicants, it is implied that VRA consultations will not take place until after April 2007, the expected completion date for the programmatic EIS process.[4] The CSRIA does not support this approach, or perceive the legal justification to do so. Our discussions about this issue, with the WADOE SEPA coordinator, indicate that the VRA consultation process can proceed at any time, including during the preparation of a programmatic EIS.[5] At a minimum, we would suggest that the VRA consultation be adopted as part of the "public involvement process" related to ESSHB-2860 implementation, and move forward.

- Likewise, all technical review needs related to the implementation of ESSHB-2860 should be aggressively pursued, including the preparation of the conservation measure data base, and related cost-effectiveness analyses.

The WADOE's fundamental objective should be to achieve near-term, measurable success for implementing ESSHB-2860 by issuing new water rights by July 1, 2007.

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[4] See letter from G. Thomas Tebb, Section Manager, CRO-WADOE, to Kennewick Irrigation District, dated May 1, 2006. The letter appears to imply that the VRA consultation will not take place until after the programmatic EIS process is finalized.

[5] Our previous experience with programmatic EISs includes USACE programmatic EISs for the Columbia River hydro projects, where the project operations were not "shut down" while the EIS was being prepared. In turn, we suggest that WADOE move forward with all ESSHB-2860 operations.

GWMA

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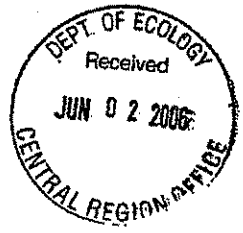

June 5, 2006

To: Derek Sandison
Central Region Director
Department of Ecology
15 West Yakima Avenue, Suite 20
Yakima, WA 98902-3452

From: The Columbia Basin Ground Water Management Area Lead Agency:
Adams County Board of Commissioners
Franklin County Board of Commissioners
Grant County Board of Commissioners
Lincoln County Board of Commissioners

Re: Comments on the Columbia River Management Plan

Our four counties represent 170,000 people and 8,128 square miles, making us slightly larger than New Jersey. With over 4.0 million farm acres, our combined agricultural economy generates $1.6 billion annually, equating to about 30% of the states total agricultural production. We place considerable value on the region's water resources and readily acknowledge that the economic health and survival of the Columbia Basin is dependent on the wise management of this precious resource. As the Lead Agency for the Columbia Basin Ground Water Management Area, we respectfully submit these comments on the Columbia River Management Plan, passed by the legislature as ESSHB 2860

1. Irrigation scheduling is the most significant potential source of 'on farm' water conservation in the Columbia Basin

Irrigation scheduling (IWM) provides growers with soil moisture data to improve water management. Data from over 7,500 fields in the Columbia Basin demonstrate that IWM conserves, on average, 17.3 % of water use and energy consumption. The reduced water in the soil profile keeps nitrates in the plant root zone, improving nutrient uptake and decreasing the potential for ground water contamination

If all 928,000 irrigated acres within the four counties of the GWMA were to apply IWM, a total of 423,000 acre feet of water would be saved. Only 319,407 acre feet originate from the 680,450 acres within the Columbia Basin Project.

To put the potential water savings into perspective, IWM applied on 200,000 acres in the Columbia Basin conserves about the same amount of water that is used annually in the City of Seattle. In recent years, the IWM program has received requests from 350,000 and 400,000 acres annually, but funding constraints have limited program participation to less than one-third of the applying acres. Additional programs with NRCS and others, administered by GWMA, combined with private funding have boosted IWM to an estimated 350,000 acres annually. With the loss of funding sources we expect this total acreage to drop to less than half that amount.

With little incentive for conservation under current water and power rate charges, the Columbia Basin GWMA has been very successful in using a subsidy incentive to encourage farmers to apply IWM

2. Irrigation scheduling <u>does not qualify for conservation funds</u> under the definitions and rules in the Columbia River Management Plan

The bill requires development of a *Columbia River water supply inventory* of potential conservation projects. Irrigation scheduling was initially included in early bill drafts and discussions. However, we believe the final language does not allow irrigation scheduling to qualify as a conservation practice within the definition required to administer the $68 million assigned to conservation practices We feel an important opportunity to conserve significant amounts of water and power and improve ground water quality in the Columbia Basin may have been lost with the exclusion of this effective conservation practice.

The bill allocates $68 million for Conservation projects over the next decade **<u>We believe this account should be allowed to fund irrigation scheduling in the Columbia Basin</u>**, the most effective practice to conserve significant amounts of on farm water and power use

3. Lincoln County stratigraphy research is critical to improving knowledge of ground water conditions in the Columbia Basin

One component of the Columbia Basin GWMA's mission is the characterization of ground water resources. Previous aquifer stratigraphy work by the GWMA identified basalt, sediment and aquifer layers in Adams, Franklin and Grant counties. With the addition of Lincoln County to the Columbia Basin GWMA, we have proposed extending this detailed mapping data into Lincoln County, adding a critical link to the existing body of stratigraphy work in the Columbia Basin.

The Columbia Basin GWMA initiated a federal earmark application for FY 2007 that contains $250,000 funding for stratigraphy work that compliments a separate $400,000 funding request from Lincoln County.

The Bureau of Reclamation has initiated the Odessa Ground Water Management Sub Area Study to address specific concerns of the irrigation districts and the Bureau with regard to the Columbia Basin Project. Recent discussions with Bureau scientists suggest the Lincoln County stratigraphy work would be a critical component of the Bureau's aquifer model.

We encourage the state to fund the proposed Lincoln County aquifer mapping stratigraphy projects in order to generate the necessary ground water data and information to improve our understanding of how, why and where this complex aquifer system works

4. We support short term solutions that can relieve pressure on the Odessa Sub-area

We support realistic short term attempts to relieve aquifer withdrawals during the next several years while plans are developed to replace groundwater withdrawal supplies with river water supply. Suggested programs such as the CREP program, BPA power buy back options, IWM within the Odessa Sub Area and other such suggestions would likely extend the aquifer resource while planning phases are completed.

5. We support building an Alternative Feed Route for the Columbia Basin Project

The Bureau of Reclamation recently announced a study to find new ways to utilize the existing infrastructure and topography to feed the Potholes Reservoir This is required to allow the East Low Canal the capacity to service additional acres and will benefit Moses Lake by flushing it with clean water.

We believe a rigorous evaluation of a hydro-electric generating facility established at Billy Clapp Reservoir on Pinto Dam should be a part of the Alternative feed route project.

Summary
State government should value the application of 'on farm' technology and practices that reduce ground water contamination and conserve water and energy. Our communities, farms, business and industry, and all water users in our four counties are attempting to comply with federal and state water quality requirements and expectations. Supporting our recommendations to the Columbia River Management Plan will improve our ability to meet these challenges and address critical ground water issues in the Columbia Basin

Roger Hartwig, Vice Chair
Adams County Board of Commissioners

Neva Corkrum, Chair
Franklin County Board of Commissioners

Richard Stevens, Chair
Grant County Board of Commissioners

Dennis D. Bly, Chair
Lincoln County Board of Commissioners

Bill Schlagel, Chair
Columbia Basin Ground Water Management Area

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June 5, 2006

Derek Sandison
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Re: Comments on the Columbia River Management Project

Dear Mr. Sandison,

Thank you for the opportunity to comment on the scope of the State Environmental Policy Act ("SEPA") non-project (programmatic) Environmental Impact Statement ("EIS") for the Columbia River Basin Water Management Program ("Management Program").

The Washington State Potato Commission ("WSPC") is a quasi-state agency dedicated to protecting the interests of potato growers in Washington State. The WSPC membership includes approximately 350 potato growers throughout Washington. Potato growers in Washington operate on an estimated 165,000 acres of farm land, primarily located in three growing regions: the Skagit Valley, Yakima Valley and the Columbia Basin. Washington State ranks second in the nation in potato production, and potatoes alternate with wheat as Washington's second largest agricultural crop. Thousands of jobs in Washington rely on potato planting, harvesting, packing, processing and transportation. In fact, economists estimate the annual economic impact of Washington potato production, packing and processing at approximately $3 billion, making potatoes one of the most important value-added agricultural commodities in the state.

Many communities and businesses in Washington depend on potato growers as customers for goods and services, employers, taxpayers, and suppliers of raw materials for the food processing industry. The stability and health of the agricultural community is important as agriculture is a major source of employment for Washington workers. In Eastern Washington and Eastern Oregon, where much of the potato production takes place, the total regional employment for 1996 was 31,300 jobs and the 1996 total regional output was $23,635,000. Allowing that some of the indirect and influenced jobs are outside of the region, it appears that 8 percent, or roughly one out of ten jobs in the region stems from potato production. Using the same calculation for

sales, roughly 12 percent of all sales in the region stem from potato production.[1] The employment provided by agriculture is extremely significant during a time when Washington and Oregon routinely rank in the highest states in the nation in relative unemployment.

As water users in the Columbia River Basin, WSPC and its members have a direct interest in the Washington State Department of Ecology's ("Ecology") programmatic EIS and the Management Program. Water rights are an especially important issue for potato farmers because virtually the entire crop is irrigated. In 1998, the USDA Farm and Ranch Irrigation Survey identified 322 potato farms in Washington irrigating 149,721 acres.[2] The decision regarding water diversions in the Columbia River Basin will have a significant impact on agriculture. Water diverted for agriculture is the largest off-stream water use in the Columbia system—over 6.5 million acres or 37 percent of total cropland in the area is irrigated. Over 93 percent of daily water use in the Columbia River Basin (105,301 acre-feet per day) is for agriculture.

Ecology must understand that any policy shift in Washington's water law will have far reaching consequences on the state's economy, as well as its ecology. The changes proposed as part of the Management Program could place an increased strain on all of Washington's farmers at a time of historically narrow profit margins. The economic health of the farming community is directly tied to the economic health of the state, as the value of agricultural output—as well as the employment of seasonal and permanent farm workers—is critical to Washington's rural counties. As such, great precaution should be taken before putting into place a Management Program which will have a significant impact on the Columbia River Basin, and by extension, the entire state.

The WSPC is pleased that Ecology has provided an opportunity to comment on the scope of the EIS for the Management Program, however, we continue to have misgivings about aspects of the Management Program and would require Ecology to spend additional time and resources in the EIS focusing on certain issues. An overview of our concerns is detailed below; we would welcome the opportunity to discuss them with you in greater detail.

1. **Ecology must carefully review the economic impact of the Management Program, including a detailed review of the impact the Management Program will have on farmers who rely on irrigation, and the businesses which rely on those farmers.**

In Eastern Washington, where much of the potato production takes place, roughly 8 percent (or one out of every ten jobs) in the region stem from potato production. The employment provided by agriculture is extremely significant in a time when Washington routinely ranks as among the

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[1] DAVID HOLLAND & JUN HO YEO, THE ECONOMIC IMPACT OF POTATOES ON THE WASHINGTON ECONOMY 26-27 (2001).

[2] U.S. DEPARTMENT OF AGRICULTURE, NATIONAL AGRICULTURAL STATISTICS SERVICE & WASHINGTON AGRICULTURAL STATISTICS SERVICE, WASHINGTON AGRICULTURAL STATISTICS 2003, 5 (2003), *available at* http://www.nass.usda.gov/wa/annual03/annual03.pdf.

State of Washington
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June 5, 2006

Derek Sandison
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RE: Comments on Scoping for Columbia River Basin Water Management Program

Dear Mr. Sandison,

Washington Department of Fish and Wildlife (WDFW) commends Ecology for its work leading to 2006 legislation and its implementation as the Columbia River Basin Water Management Program. WDFW has been partnering with Ecology throughout this process and believes the Program appropriately balances water for fish and water for people.

I wish to convey WDFW goals for fish and wildlife as we move through implementation of the Columbia River Basin Water Management Program. WDFW Agency Policy 5202 (Requiring Or Recommending Mitigation) *"applies to all habitat protection assignments where the Washington Department of Fish and Wildlife is issuing or commenting on environmental protection permits [or] documents…".* This policy provides guidance to agency staff, as follows:

1. ***Goal is to achieve no loss of habitat functions and values.***

   The goal of WDFW is to maintain the functions and values of fish and wildlife habitat in the state. We strive to protect the productive capacity and opportunities reasonably expected of a site in the future. In the long-term, WDFW shall seek a net gain in productive capacity of habitat through restoration, creation, and enhancement.

   Mitigation credits and debits shall be based on a scientifically valid measure of habitat function, value, and area. Ratios shall be greater than 1:1 to compensate for temporal losses, uncertainty of performance, and differences in functions and values.

2. ***WDFW uses the following definition of mitigation; avoiding impacts is the highest mitigation priority.***

   "Mitigation" means actions that shall be required or recommended to avoid

or compensate for impacts to fish, wildlife, or habitat from the proposed project activity. The type(s) of mitigation required shall be considered and implemented, where feasible, in the following sequential order of preference:

A. Avoiding the impact altogether by not taking a certain action or parts of an action.

B. Minimizing impacts by limiting the degree or magnitude of the action and its implementation.

C. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment.

D. Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action.

E. Compensating for the impact by replacing or providing substitute resources or environments.

F. Monitoring the impact and taking appropriate corrective measures to achieve the identified goal.

In addition, DFW policy 5204 (Managing Instream Flows And Water Projects) states that *"WDFW Will, As Appropriate, Request or Require Monitoring by Project Proponents For Hydroelectric Projects Licensed by FERC, or for Other Major Water Projects."* This means that, in addition to other actions required in conjunction with the issuance of new permits, WDFW would request that stream flow be monitored to ensure instream flows are sufficiently met under the new Program.

Questions to consider for scoping

With this in mind, please consider and address the following topics, concepts, and questions in your Columbia River Basin Water Management Program Environmental Impact Statement:

Instream Flow

With respect to the issuance of any new water rights, or conversions of interruptible to non-interruptible rights, our goal is to ensure flow functions remain unchanged, or even enhanced.

1. In the EIS, please evaluate how Ecology will ensure "no net loss" of instream flow during July and August.
2. Please address how Program implementation will affect instream flows during other months of the year, and how those effects can be mitigated.
3. Also in areas affected by "new" water rights, please discuss how adequacy of instream flows will be monitored and evaluated. What contingency actions are planned if impacts to instream flow are detected? Implementation options should

include monitoring and evaluation of instream flow in river reaches affected by "new" permits.

Mitigation Costs for Storage Projects

4. With respect to storage projects, WDFW reiterates our expectation that full mitigation for inundated lands and other fish and wildlife resource impacts be considered up front as part of total project costs. This concept is represented in Bureau of Reclamation's project screening criteria, however I wish to stress the importance, as a matter of good public policy, of including estimates for mitigation costs within the total project cost picture. This provides decisionmakers with a complete up-front picture of the costs of the project, and avoids viewing mitigation costs as add-ons or penalties.

Conversions

5. There is an underlying assumption that no new conversions to agricultural lands from native vegetation will take place as a result of the Program. Please address the potential for land use conversions from native vegetation to new agricultural uses throughout the project area.
6. Likewise, please evaluate the potential for water to change from agricultural use (primarily in summer months) to municipal use (year-round) and in what quantities. Please address the differential costs and benefits to fish and wildlife from such a transfer, including seasonality of withdrawal and potential for return flows.

Anadromous Fish

While off-channel storage has the potential to augment flows to benefit fish, care must be exercised to ensure that water stored for salmonids be of sufficient quality, temperature, and quantity, and that it can be managed without limitation. Also, large off-channel water storage projects located on tributaries provide increased risk to salmonids. Because releases of stored water are likely to comprise a significant proportion of tributary flow, those releases, if warm, would consequently elevate stream temperatures. False attraction of upper Columbia River salmonids may also result when relatively large flows of stored Columbia River water are discharged to a tributary stream. Finally, spill at dams has been demonstrated to provide real and measurable fish benefits. The ability to use water allocated for instream flow uses for spill rather than power generation is essential to Program success.

7. Please evaluate water discharge alternatives and other ways to ensure discharged water is the appropriate temperature to maintain instream conditions and meet fish needs.
8. When evaluating alternatives, dispensation of water allocated for fish, whether from new storage or trust, must include the opportunity for additional spill at the hydropower dams. Please evaluate the likelihood that those flows will be used to enhance spill rather than for hydropower generation. Clearly, this ties in with your

already-planned evaluation of the linkages between this Program and ongoing BiOp development for the Federal Columbia River Power System.

Fish and Wildlife Populations and Habitats

Inundation, altered pool elevations on existing reservoirs, changed elevation fluctuation frequency and timing, modifications to existing water delivery and evacuation systems, changes in water quality and flow volumes, and land use conversions have the potential to profoundly affect many fish and wildlife species and their habitats. Some of these species are common, and form the basis for fish and wildlife related recreation in the Basin, while others are rare and their continued existence may be at risk from changes brought about by the Program.

Loss of shrub-steppe habitat is a primary concern to WDFW. Many animal species that have been listed as "species of concern," "candidate for listing," state threatened or endangered, and federal threatened or endangered are dependent upon this dwindling habitat. In addition, many of Washington's more popular game and watchable wildlife species depend upon large contiguous blocks of shrub-steppe habitat.

WDFW's goal is to maintain and enhance the functions and values of fish and wildlife habitat in the state.

9. Here, I must state the obvious: Please ensure that evaluations of action alternatives of the Program consider the full range of fish and wildlife species affected, identify all impacts to those species, review opportunities to avoid impacts, and identify alternatives for mitigation.
10. Similarly, The EIS should inventory and map all habitat types in the Basin, identify the extent to which the Program will affect each type, and show alternatives and costs for how these impacts can be avoided or fully mitigated.
11. When considering terrestrial wildlife habitats, please emphasize evaluation of impacts to shrub-steppe.
12. Special attention should be paid to sage-grouse, pygmy rabbit, jackrabbit, sharp-tailed grouse, ferruginous hawk, mule deer, Rocky Mountain elk, and bighorn sheep populations (among others) that are dependent upon shrub-steppe habitat.
13. Please emphasize evaluations of the effects of changes in characteristics of wetlands on waterfowl and shorebird nesting and rearing.
14. Please assess the extent to which changes in water quality, flows, pool elevations, and other habitat attributes of Roosevelt Lake, Banks Lake, Billy Clapp Lake, Moses Lake, and Potholes Reservoir will affect production of resident fish species, including bass, walleye, and other spiny ray fish species, as well as kokanee and trout.
15. Please address the likelihood and extent to which the extremely complex wetland habitats and potholes between Moses Lake and Potholes Reservoir, and elsewhere, would be lost or converted to open water.

16. Plans and estimated costs for effectiveness monitoring, evaluation, and adaptive management should accompany every mitigation alternative.

Recreational Opportunity

Much of the wetland, lacustrine, and riparian habitats, and fish and wildlife benefits and associated outdoor recreation, have long been considered among the primary public benefits and justifications for the Columbia Basin Project. The entire Columbia Basin supports significant fishing opportunities for native resident fish as well as for warm water spiny ray fish species. Wetlands and upland habitats provide significant hunting opportunities for waterfowl and upland birds and game animals.

Changes in animal habitats could significantly impact hunting and resident fishing opportunities. Drawdown of pool elevations in Roosevelt Lake could adversely affect boating and water related recreation as well as use of private resorts and public campgrounds. On the other hand, fishing for anadromous species will be enhanced as their populations improve through implementation of the Program. Clearly, alternatives within the Program have potential for major effects on fish and wildlife associated outdoor recreation.

While the economic review developed by the University of Washington highlighted the relationship between water use and economic productivity in Eastern Washington, it did not assess economic impacts to the region through changes to fish and wildlife populations and associated recreational opportunity.

17. Each EIS alternative should identify the extent to which existing hunting, fishing and wildlife watching benefits are affected and evaluate economic impacts.
18. Alternatives for avoiding impacts on fish and wildlife-related recreation, along with suitable mitigation opportunities, should be identified.
19. It is important to solicit comments from hunters, fishers, boaters, wildlife viewing recreationalists and recreational organizations so their views can be incorporated into the environmental review process.

Thank you for the opportunity to comment at this important stage of the Program. WDFW pledges its continued commitment to work collaboratively with Ecology as implementation of the Columbia River Basin Water Management Program unfolds.

Sincerely,

T. Scott

Teresa Scott
Natural Resource Policy Coordinator
Columbia River Policy Group

WASHINGTON ENVIRONMENTAL COUNCIL

PROTECTING OUR LAND, AIR AND WATER

BRINGING RIVERS TO LIFE

American Rivers

FOUNDED 1973

June 5, 2006

Derek Sandison
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RE: Columbia River Management Program EIS Scoping Comments

Dear Mr. Sandison:

American Rivers and the Washington Environmental Council appreciate the opportunity to comment on the programmatic Environmental Impact Statement ("EIS") that the Department of Ecology is preparing for its Columbia River Management Program ("Columbia Program").

As you know, our organizations were key participants in the negotiations that culminated in the passage of a new law, ESSHB 2860, which is the primary focus of this EIS. In addition, American Rivers and the Washington Environmental Council have a long history of working to protect and restore the riverine ecosystems of Washington State, including the Columbia and lower Snake Rivers. We look forward to working with Ecology and other interests to improve water management along the Columbia and lower Snake rivers in a manner that provides sufficient instream flow to support healthy fish and wildlife populations and meet water quality standards, while providing water for out-of-stream uses consistent with the public interest.

We appreciate Ecology's identification of many important issues that should be addressed in the EIS, as set forth in Attachment A to the Determination of Significance. Our comments focus on several topics that were not identified in Attachment A. A complete analysis of these issues in the programmatic EIS is essential to informed decision-making.

- Assessing the public interest served by expanding the water supply for out-of-stream consumptive use, and the amount of water necessary to meet the public interest

For large public investments to secure new water supplies to be in the public interest, they must provide a demonstrable benefit that justifies the expenditure of public funds. Demand for irrigation water has been identified as the major future demand on mainstem Columbia water, but recent, unrefuted economic analysis indicates that expanding

irrigated acreage along the Columbia would be economically harmful to Washington State growers as a whole because it would depress prices. See *An Assessment of Future Markets for Crops Grown Along the Columbia River: Economic implications of increases in production resulting from new agricultural water rights under the Columbia River Initiative*, Texas Agribusiness Market Research Center Report, September 2005.

If this is true, it would not be in the public interest to develop new storage for the purpose of expanding irrigated agriculture. As noted in the above-referenced report, Ecology should look at the impact of increasing the supply of irrigation water from the standpoint of all growers in the State, not just those who would gain access to more water.

- Analysis of socio-economic and agricultural commodity market trends in affected area

The economy of communities along the Columbia mainstem is undergoing dramatic change. Current and long-term trends show contraction within the agricultural sector due in large part to market forces, including international competition. Growth sectors include retail, tourism, and services. All indicators point to a continuation -- if not acceleration -- of those trends. Understanding these economic and demographic trends is essential to smart long-term water planning, including the size of the water supply projects needed. Water supply should be developed to meet likely future needs that serve the public interest.

- Evaluation of adequate range of alternatives for meeting established instream and out-of-stream needs

Section 2(2)(a) of ESSHB 2860 authorizes expenditures from the water supply development account to "assess, plan, and develop new storage, improve or alter operations of existing storage facilities, implement conservation projects, or <u>any other actions designed to provide access to new water supplies within the Columbia River basin</u>." In addition, Section 2(3)(a)(iv) requires that, prior to constructing new storage facilities, Ecology must evaluate "[a]lternative means of supplying water" to serve the uses that a proposed storage facility is intended to serve.

These provisions highlight the need for the programmatic EIS to evaluate a range of water supply alternatives available for meeting consumptive use demand and instream flow protection. Those alternatives should include water acquisition notwithstanding the unavailability of money from the water supply account for acquisition. They should also include programs that reduce irrigation, such as Farm Bill conservation programs. Alternatives that would have instream flow benefits in important tributary reaches and the mainstem should be given a hard look. Assessing a complete range of water supply tools at the Basin scale would help inform the selection of alternatives for project-specific EISs and streamline the analysis of those alternatives.

- Analysis of potential impact of storing water on the ecological functions performed by high flows, the Columbia River plume, and federal target flows for ESA-listed salmon and steelhead

River flow must be reduced at specific times of the year in order to store water. Thus, for storage to make sense, there must be sufficient water that can be captured without impairing water quality and fish and wildlife habitat. It is often assumed that conditions during high-flow times of the year (e.g., winter) will enable water to be stored without significant impacts. That assumption may not be accurate, however.

High flows are necessary to maintain river health because they recruit gravel and wood, flush fine sediment, and prevent vegetation encroachment into the river channel. These functions are particularly important in the free-flowing Hanford Reach, which is a functioning riverine ecosystem. In addition, high Columbia River flows are important to the plume in the Columbia River estuary during spring runoff, and recent research has revealed the importance of the plume to salmon and steelhead as well as other biota. Finally, the National Marine Fisheries Service has established flow targets for the spring and summer salmon and steelhead migration period. Water should not be stored when doing so would hinder efforts to meet the federal flow targets.

Accordingly, the programmatic EIS should analyze Columbia mainstem flow to determine whether there are times of the year when flow is adequate to allow for storage, and if so, the quantity of water that could be stored without causing ecological harm. The analysis should account for years of high, average and low precipitation.

- Interpretation of "no negative impact on mainstem instream flow" with respect to voluntary regional agreements

This is an important issue that requires clarification. The intent of the bill negotiators was to ensure that new water supply would not further diminish instream flow in the mainstem Columbia and Snake rivers during times of the year when flows are inadequate to protect salmon and steelhead, and the term should be interpreted in a manner that effectuates that intent. Accordingly, American Rivers and the Washington Environmental Council strongly urge Ecology to interpret this term to mean that there cannot be any diminution of flow below the point of diversion for new water rights issued for out-of-stream use pursuant to voluntary regional agreements.

In previous conversations, Ecology staff had indicated that it might be permissible to allow mitigation water for lower Snake River water withdrawals below Ice Harbor to be added in McNary pool on the mainstem Columbia because the McNary pool backs up to Ice Harbor dam. As we have pointed out and the Washington Department of Fish and Wildlife has confirmed, this is not an acceptable form of mitigation because adding water to McNary pool actually increases pool elevation and slows velocity in the lower Snake. For this reason the mitigation water must be added at or above the point of diversion.

It also bears mention that the "no negative impact" standard applies to the lower Snake River during the months of April through August under Section 4(2)(b) of the new statute. This fact was apparently overlooked in the Determination of Significance, which discusses only the Columbia.

American Rivers and the Washington Environmental Council also wish to briefly comment on the proposal by the Bureau of Reclamation to provide an alternative feed route to the Potholes reservoir through Crab Creek, which is an early activity associated with the Columbia Program identified in the Determination of Significance. We want to make sure that the EIS addresses the ecological impact to Crab Creek and its fish and wildlife resources. In particular, Crab Creek supports a healthy trout population that draws anglers from across the state. Many in the angling community have expressed concern about this proposal, and the EIS should fully analyze any potential impacts.

Thank you for considering our comments, and we look forward to working with Ecology and other interested parties to ensure that the Columbia Water Program is successful.

Sincerely,

Robert J. Masonis
Senior Director
American Rivers

Michael Mayer
Legal Director
Washington Environmental Council

AWB

Association of Washington Business
P.O. Box 658 ■ 1414 Cherry Street Southeast
Olympia, Washington 98507-0658

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Washington state's chamber of commerce

VIA E-MAIL and REGULAR MAIL

June 1, 2005

Derek Sandison
Department of Ecology
15 West Yakima Ave., Suite 200
Yakima, WA 98902-3452

Re: AWB comments regarding scope of EIS for Columbia River Basin Water Management Program

Dear Mr. Sandison:

The Association of Washington Business (AWB) appreciates the opportunity to respond to the Department of Ecology's (DOE) request for comments on the Determination of Significance Request and Scope of EIS for the Columbia Basin Water Management Program. We also appreciate the series of regional stakeholder meetings recently held in eastern Washington and your meeting with Chris McCabe of our staff on May 22nd in Moses Lake.

AWB is comprised of over 5,600 small, medium and large businesses in Washington state including farmers, orchardists, irrigation associations and districts and private landowners. We hereby submit the following comments for your review.

As you know, the passage of ESSHB 2860 represents a significant milestone in water policy in Washington state. A variety of stakeholders, including the governor and DOE, the Legislature and the business and environmental communities, came together in a historic agreement that provides additional water from the Columbia River for both in and out-of-stream uses. We strongly encourage DOE to maintain the momentum and trust that was built during the negotiations of ESSHB 2860 and to not slow the process during its implementation. We view this new law as a good starting point for the people of this state and encourage DOE to build on the above mentioned momentum and trust.

In December of 2004 DOE issued a draft Programmatic EIS on the Columbia River Mainstem Water Management Program. In the spirit of maintaining the political momentum behind ESSHB 2860, we believe that document should be use as the basis for the existing SEPA compliance process, rather drafting an entirely new EIS. Instead, we believe the state should complete a

Supplemental EIS to the December 2004 EIS that pertains to the specific omissions or impact relative to ESSHB 2860. The existing programmatic EIS adequately addresses and provides full disclosure for the primary impact of new water withdrawals from the Columbia River.

In addition, AWB urges DOE to promptly proceed with the implementation of one of the major components of ESSHB 2860: new water storage facilities. We believe a majority of the water provided by ESSHB 2860 for out-of-stream uses will come from newly constructed storage facilities. All new storage facilities will require individual SEPA/EIS study and review. Therefore, we urge DOE to fast track the storage provision of ESSHB 2860 and aggressively proceed with necessary studies and reviews so that storage facility sites may be identified and construction may begin in the next few years. This will provide long-term water storage and use to the people in central and eastern Washington.

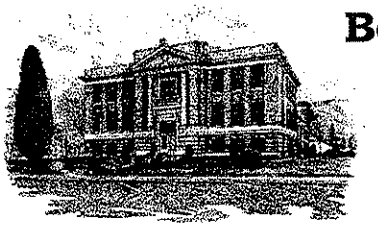
Additionally, we urge DOE to promptly proceed with the consultation process for voluntary regional agreements provided by ESSHB 2680 to provide immediate relief to our members that will directly benefit from that process.

Thank you again for the opportunity to provide written comments on this important subject. Please do not hesitate to contact us with additional questions or information.

Sincerely,

Gary Chandler
Vice President of Governmental Affairs
Association of Washington Business

Cc: Jay Manning, Director WADOE
Gerry O'Keefe, Coordinator, WADOE Columbia River Water Management Program



Board of County Commissioners
BENTON COUNTY
P.O. Box 190 • Prosser, WA 99350-0190
Phone (509) 786-5600 or (509) 736-3080
Fax (509) 786-5625

Leo Bowman
District 1
Max Benitz, Jr.
District 2
Claude Oliver
District 3

May 23, 2006

Mr. Derek Sandison, Central Regional Director
Department of Ecology
15 West Yakima Ave. Suite 200
Yakima, WA 98902

Re: Columbia River Water Management Program

The Board of Benton County Commissioners has addressed the issues in the EIS for Columbia River Basin Water Management Program. Below are question we would like to submit either for clarification or direct answers with regard to HB2860 and ESSHB2860.

1. **Voluntary Regional Agreement:**

    a. Will we have clear and definitive parameters (rules and/or criteria) of what constitutes a Voluntary Regional Agreement?

    b. Is it as described in the RCW (Title 90) to meet the four (4) part test for water rights, in that water is available, water withdrawals are in the public interest and water withdrawals with not create impairment?

    c. What exactly is the terms and conditions of this agreement?

    d. Will it be necessary to provide "new water" if permits are to be issued from the John Day/McNary Pools as described in WAC 173-531A?

2. **Columbia River Management Program:**

    a. How are the members of the committee who design and write the program material?

    b. How approves the program material? How are the material(s) developed and what bases are they determined?

    c. Will the hydroelectric operators (BPA and the PUD) cooperate and be a part of the Management Program?

    d. Will this program be an operational plan?

e. Will this plan or program be based on scientific parameters and consider biological demand based on these scientific parameters?

3. **Programmatic EIS:** You have listed eight (8) projects associated with the topics; none address the most important issue. The bases for all decisions to be made from, is determining the ***true dynamics*** of the river itself, then work can (should) be accomplished as described in this projects list.

   a. Can you explain the true velocity buffering effect created from surface to volume ratios the linked lakes (dams) have on the water releases made from Lake Roosevelt?

   b. Can you determine what velocity improvement there will be from 87,000 acre feet of water there will be at McNary Dam?

   c. Can you define the velocity needed within 100 feet of the shoreline where fish migrate? Do you know that 87,000 acre-feet (Judge Redden release) are only 40% of the one day's average flow of the Columbia River?

   d. What velocity is calculated from this release?

   e. Will this EIS define the maximum temperatures that will hazard fish and the shoreline ecosystem and what velocities are required during this defined time period?

4. **Benton Klickitat Counties Issues:**

   a. Will the implementation plans developed by the planning units of the WIRA's be addressed as part of the Columbia River Management Program and will the plans be included in the program?

   b. What defines mitigation and who identifies and implements appropriate mitigation?

   c. Is there a time frame given to submit a Voluntary Regional Agreement and are there boundaries to the term Regional?

   d. Is it by WIRA definition or some other geographic detail? When will the answers in Item # 1 be available?

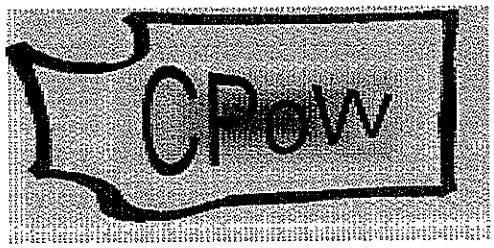
With this list of questions that we have identified, the Board of County Commissioners would like to continue to be engaged in the discussion for permanent water rights from the McNary/John Day reserves.

Sincerely,

Max Benitz, Jr., Chairman
Benton County Commissioner

Sandison, Derek

From: Cattle Producers of Washington [cattle_producers_of_wa@earthlink.net]
Sent: Saturday, May 20, 2006 8:32 PM
To: Sandison, Derek
Subject: CPoW's Comments concerning Scope of EIS for Columbia River Management Program
Attachments: clip_image001.png



Cattle Producers of Washington
P.O. Box 103
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Email: cattle_producers_of_wa@earthlink.net

May 19, 2006

Derek Sandison
Department of Ecology
15 West Yakima Avenue, Suite 200
Yakima, WA 98902-3452
Email: dsan461@ecy.wa.gov

Re: **CPoW's comments concerning Proposed New Programmatic EIS for Columbia River Management Program**

Dear Derek Sandison:

I am writing on behalf of Cattle Producers of Washington (CPoW) to provide comments in response to the Department of Ecology's proposed scope of the Programmatic Environmental Impact Statement (EIS) for SEPA compliance of the state's new Columbia River Water Management Program.

CPoW is a non-profit association that represents hundreds of Washington State cattle producers on variety of legislative, regulatory and international trade issues. CPoW is dedicated to ensuring the continued profitability and viability of the Washington cattle industry. CPoW's membership consists primarily of cow-calf operators, cattle backgrounders, and feedlot owners. Its members are located almost every county in the state.

The beef industry in Washington contributes significantly to Washington State's economy. The value of receipts from the sale of cattle in 2004 was nearly $600 million. The value of production (total value of cattle on farms and ranches in 2004) was almost $500 million. [These numbers do not reflect the multiplier effect that businesses

supporting the beef industry contribute to the state's economy.]

In Washington State there are approximately 13,000 ranchers and cattlemen and 850 dairy farmers located in almost every county in the state. Approximately 5,000 Washington beef producers have fewer than 9 head of cattle.

Cattle and beef production comprises the single largest sector of U.S. agriculture and is the 4th largest commodity in Washington State, with an annual production (farmgate) value of approximately $500 million. Cattle are raised in all fifty states and roughly half of all U.S. farms have beef cattle as part of their operations. Given its size, the cattle and beef industry is of paramount importance to the rural economy of the state and the country.

The availability of irrigation water supplies is a critical issue for the Washington cattle industry. Restrictions concerning the use and availability of water have adversely impacted cattle producers in many areas of Washington State. If the state does not immediately begin to implement the new Columbia River Water Management Legislation in a way that will create a better economic environment relating to the certainty of irrigation water supplies in Washington State, the result will be the continued uncertainty concerning the availability of water which will undermine confidence in the cattle/beef industry economy in Washington State.

As many of CPoW's members learned at the May 18th public meeting in Colville, the Department of Ecology is proposing to proceed with a new Programmatic EIS to address SEPA compliance for actions and activities under the new Columbia River water management legislation (ESSHB 2860). As a result, CPoW has the following comments and concerns regarding the state's approach relating to the Programmatic EIS to achieve SEPA compliance:

The Department of Ecology recently issued a draft Programmatic EIS (in December 2004) on the Columbia River Mainstem Water Management Program and that document should serve as the foundation for the existing SEPA compliance process. Rather than issue an entirely new Draft EIS, the state should instead issue a Supplemental EIS to the December 2004 EIS and focus the supplemental document on what are clearly "programmatic omissions or impacts" relative to the content of ESSHB 2860. The December 2004 Programmatic EIS adequately addresses and provides full disclosure for the primary programmatic impact such as new water withdrawals from the Columbia River system. A carefully, concisely scoped Supplemental EIS should be followed with an agency Record of Decision completing the SEPA review process in a timely manner.

CPoW believes that the proposed new Programmatic EIS is unnecessary and should not be applied to specific actions/projects that already receive SEPA compliance review. Specific, large-scale projects identified within the scoping documents will require a full project EIS anyway. Therefore, attempting to apply adequate SEPA compliance coverage via a Programmatic EIS will be an unnecessary application and take away resources/time from preparation of the needed project EIS's. Moreover, any cumulative impacts stemming from the joint projects can be addressed within specific project EIS's, following conventional practices for EIS preparation. Conversely, activities such as issuing new water rights from the mainstem Columbia-Snake River system, including related mitigation actions, or implementing conservation measures, already receive SEPA compliance through an environmental (SEPA) checklist review, where almost all permit and conservation measure actions receive a determination of non-significance (DNS).

Furthermore, as it is explicitly acknowledged within ESSHB 2860 that full mitigation is required for the issuance of new water rights under the Columbia River management program, it is not appropriate for Ecology to assume that the issuance of new water rights will "have a significant adverse impact on the environment" (as stated in Ecology's request for comments).

Finally, it is unclear why some "administrative" actions are even being considered for SEPA compliance and EIS

review. For example: why does Ecology need to do an EIS review concerning how conservation measures will be evaluated, how water use is measured, how the trust water rights program is managed, how WADOE will decide to sign a voluntary regional agreement and several other items identified within the scoping document? These types of administrative/assessment actions are already allowed for and administered under RCW and WAC, so they should not require additional SEPA compliance review.

The Washington State Department of Ecology should not delay the implementation of key features within ESSHB 2860 during any programmatic EIS process. As a result, **CPoW recommends that critical actions under ESSHB 2860 be implemented, with or without a programmatic EIS process, so that new Columbia-Snake River system water rights are issued in 2007**. Furthermore, **CPoW specifically recommends that the ESSHB 2860 consultation process be immediately commenced for the Voluntary Regional Agreement and any concerns raised by the consulting agencies, tribes, and public can be addressed thereafter by WADOE as part of its Record of Decision for accepting the VRA** (and including within any supplemental EIS or as part of the overall public involvement process for the implementation of the Columbia River Water Management Program).

In conclusion, CPoW believes that WADOE needs to move ahead expeditiously with focusing on achieving near-term, measurable success in implementing the VRA portion of ESSHB 2860 and issue additional or new water rights by July of 2007.

Thank you for the opportunity to provide comments.

Sincerely,

Lee Engelhardt

Chair / President
Cattle Producers of Washington

May 15, 2006

Derek Sandison
Department of Ecology
15 West Yakima Avenue, Suite 200
Yakima, WA 98902-3452

Re: **WSHA's Comments concerning Proposed New Programmatic EIS for Columbia River Management Program**

Dear Derek Sandison:

I am writing on behalf of the Washington State Horticultural Association (WSHA) to provide comments in response to the Department of Ecology's request for comments on the its Proposed Scope of the Programmatic Environmental Impact Statement (EIS) for SEPA compliance of the state's new Columbia River Water Management Program.

The WSHA is a trade association dedicated to the advancement of the tree fruit industry in Washington State. The WSHA has nearly 3,000 tree fruit grower members throughout Washington State and is the largest tree fruit association in the state. Apples are the number one crop grown in the state, with an annual farmgate value of approximately $1 billion. Washington State accounts for over 50% of all apples, pears and cherries exported from the U.S., totaling nearly $450 million in exports from the Ports of Seattle, Portland, and Tacoma in 2005 alone. A recent study of the economic impacts of the Washington State tree fruit industry show that the industry contributes over $5 billion annually to the Washington economy. This translates into over 100,000 jobs.

The availability of adequate supplies of irrigation water is a major issue for the Washington tree fruit industry. Restrictions concerning the use and availability of water have adversely impacted tree fruit growers in many areas of Washington State. If the state does not immediately begin to implement the new Columbia River Water Management Legislation in a way that will create a better economic environment relating to the certainty of irrigation water supplies in Washington State, the result will be the continued uncertainty concerning the availability of water which will undermine confidence in the tree fruit economy in Washington State.

As you are aware, the Department of Ecology is proposing to proceed with a new Programmatic EIS to address SEPA compliance for actions and activities under the new Columbia River water management legislation (ESSHB 2860). As a result, the WSHA has the following comments and concerns regarding the state's approach relating to the Programmatic EIS to achieve SEPA compliance:

The Department of Ecology has already issued a draft Programmatic EIS (in December 2004) on the Columbia River Mainstem Water Management Program and that document should serve as the foundation for the existing SEPA compliance process. Rather than issue an entirely new Draft EIS, the state should instead issue a Supplemental EIS to the December 2004 EIS and focus the supplemental document on what are clearly programmatic omissions or impacts relative to the content of ESSHB 2860. The December 2004 Programmatic EIS adequately addresses and provides full disclosure for the primary programmatic impact such as new water withdrawals from the Columbia River system. A carefully, concisely scoped Supplemental EIS should be followed with an agency Record of Decision completing the SEPA review process in a timely manner.

The WSHA believes that the proposed new Programmatic EIS is unnecessary and should not be applied to specific actions/projects that already receive SEPA compliance review. Specific, large-scale projects identified within the scoping documents will require a full project EIS anyway. Therefore, attempting to apply adequate SEPA compliance coverage via a Programmatic EIS will be an unnecessary application and take away resources/time from preparation of the needed project EIS's. Moreover, any cumulative impacts stemming from the joint projects can be addressed within specific project EIS's, following conventional practices for EIS preparation. Conversely, activities such as issuing new water rights from the mainstem Columbia-Snake River system, including related mitigation actions, or implementing conservation measures, already receive SEPA compliance through an environmental (SEPA) checklist review, where almost all permit and conservation measure actions receive a determination of non-significance (DNS). Furthermore, as it is explicitly acknowledged within ESSHB 2860 that full mitigation is required for the issuance of new water rights under the Columbia River management program, it is inappropriate for Ecology to assume that the issuance of new water rights will "have a significant adverse impact on the environment" (as stated in Ecology's request for comments).

Finally, it is unclear why some "administrative" actions are even being considered for SEPA compliance and EIS review. For example: why does Ecology need to do an EIS review concerning how conservation measures will be evaluated, how water use is measured, how the trust water rights program is managed, how WADOE will decide to sign a voluntary regional agreement and several other items identified within the scoping document? These types of administrative/assessment actions are already allowed for and administered under RCW and WAC, so they should not require additional SEPA compliance review.

The Washington State Department of Ecology should not delay the implementation of key features within ESSHB 2860 during any programmatic EIS process. As a result, the WSHA recommends that critical actions under ESSHB 2860 be implemented, with or without a programmatic EIS process, so that new Columbia-Snake River system water rights are issued in 2007. Furthermore, the WSHA specifically recommends that the ESSHB 2860 consultation process be immediately commenced for the Voluntary Regional Agreement and any concerns raised by the consulting agencies, tribes, and public can be addressed thereafter by WADOE as part of its Record of Decision for accepting the VRA (and including within any supplemental EIS or as part of the overall public involvement process for the implementation of the Columbia River Water Management Program).

In conclusion, the WSHA believes that WADOE does not need to conduct a duplicative Programmatic EIS (to the one that was already done in 2004). Instead, the agency needs to take the more efficient and streamlined approach of updating the December 2004 Programmatic EIS, so it can move ahead expeditiously with focusing on achieving near-term, measurable success in implementing the VRA portion of ESSHB 2860 and issue additional or new water rights by 2007. In addition, the WSHA urges WADOE to fast-track the storage portion of ESSHB 2860 and aggressively move ahead with appropriate studies and reviews that are results-oriented so that construction can be pursued in the next few years on one or two major storage options which will help provide long-term adequate water storage for Central Washington.

Thank you for the opportunity to provide comments.

Sincerely,

James M Hazen

James M. Hazen
Executive Director
Washington State Horticultural Association
509-665-9641
PO Box 136, Wenatchee, 98807

CLEAN, FLOWING WATERS FOR WASHINGTON

The Center for
Environmental Law & Policy

June 2, 2006

Derek Sandison
Department of Ecology
15 West Yakima Ave. Suite 200
Yakima, WA 98902-3452

Re: Comments on Scope of EIS for Columbia River Basin Water Management Program

Dear Mr. Sandison:

The Center for Environmental Law & Policy (CELP) is a non-profit membership organization that works to defend and develop ecologically and socially responsible water laws and policies. CELP speaks for the overall public interest in the public's water; its mission is to leave a legacy of clean, flowing water for Washington. CELP's 10-year history of advocacy for the Columbia River has included petitioning (in the year 2000) for a moratorium on further withdrawals until higher, more protective instream flow rules could be developed. In 2002, CELP also appealed the issuance of a large water right to the Quad Cities of Pasco, Richland, Kennewick and West Richland. This litigation culminated in a 2003 settlement agreement that allowed the cities to receive – with certain mitigation conditions - a new water right for 178 cfs/96,619 acre/feet/year - to be developed through 2051. (Documents attached.) Therefore, CELP has a unique and ongoing interest in all matters related to the health and management of the Columbia River. In furtherance of this interest, CELP maintains a wealth of data on water use and water rights in the basin, scientific data and reports detailing historical river levels and river flows, and legal and policy materials pertinent to Columbia River management issues. In short, CELP and its members are knowledgeable, interested, and significant stakeholders in the outcome of this EIS, and possess a desire to be meaningfully involved in the management program's implementation and processes.

Thank you for considering CELP's comments on the scope of the EIS for the Columbia River Basin Water Management program. We would welcome the opportunity to further discuss our views with you, and to submit additional comments and suggestions as the EIS process develops.

PRELIMINARY OBSERVATIONS AND COMMENTS:

A. CELP urges the Department of Ecology to revise the scope of this EIS to focus more closely upon the directives in ESSHB 2860 to develop new water supplies to protect, benefit and improve the instream flow needs of fish. The EIS scoping documents focus too narrowly upon an array of pre-conceived "solutions" to deliver water mainly to out of stream users. Missing from the documents is a comprehensive exploration of a range of alternatives to satisfy the dual legislative purpose of developing new water supplies for instream as well as out of stream needs.

B. The DS and "Attachment A – Issues to be addressed in EIS" too often inappropriately attempt to use the EIS process as a substitute for rule-making and policy-making. CELP urges

Ecology to instead adopt rules to implement portions of ESSHB 2860, particularly with regard to Section 4 – Voluntary Regional Agreements.

C. It is inappropriate to address in a programmatic EIS specific project activities such as developing "the means to deliver Columbia Basin Project Water to lands in the Odessa Ground Water Management Subarea". This action requires a separate SEPA as well as NEPA analysis, and very likely consultation under ESA.

D. We question the appropriateness of this EIS evaluating "early activities" proposals such as those described on DS page 2 involving requests from the Bureau of Reclamation to divert additional water from Lake Roosevelt for various uses, and requests from the BOR to provide an alternate feed route to the Potholes Reservoir. Such project activities encompass federal actions that should be scrutinized by NEPA and are also subject to consultation under ESA. Any analysis of these activities in this EIS would be incomplete without the benefit of the results of environmental and ESA scrutiny required under federal law.

E. It is inappropriate, for several reasons, for this EIS to evaluate a specific proposal for a Voluntary Regional Agreement, as mentioned on page 2 of the DS.

1. If a VRA proposes to govern the allocation of more than 1 cfs of water for purposes other than irrigation, or more than 50 cfs for purposes of irrigation, it must undergo its own separate SEPA analysis.
2. A maximum net benefits analysis (see RCW 90.54.020(2) should also be conducted in connection with a VRA, and no such individualized analysis is a feature of a programmatic EIS.
3. It is premature for Ecology to enter into any VRA until it has established the baseline data and criteria necessary to satisfy the statutory requirement in ESSHB 2860 Section 4(2)(a) and (b) that there will be "no negative impact" on Columbia River mainstem instream flows in July and August, and no negative impact on Snake River instream flows from April through August. The law does not take effect until July 1, 2006. Hence, data upon which to measure "no negative impact" must be measured from July 1, 2006 onward, and will not be complete until at least June 30, 2007. (The programmatic EIS should, however, examine whether one year of data is sufficient to form the necessary baseline measuring stick for any VRA.)

GENERAL ISSUES:

I. **The EIS must examine the extent to which existing water infrastructure can be modified to ESSHB 2860 objectives.**

a. Conservation and reclaimed water programs already in existence should be evaluated prior to implementation of any additional storage projects, to determine whether and how much water is actually capable of being saved.
b. Any VRAs considered for approval must be conditioned on requiring best available technology of new water right recipients.
c. The EIS should examine the impacts of allocating to instream needs up to 100% of "new water" resulting from altering operations of existing storage facilities. (The formula for 2/3 to out of stream uses & 1/3 to instream uses applies only to new

storage facilities. See Section 3 (1)(a) and Section 1 regarding the intent to develop new water supplies to meet the instream flow needs of fish.)

II. **The EIS must examine how Ecology will relate storage and conservation projects on tributaries to the mainstem program.**

a. Tributary storage and conservation should be required to meet the same monitoring and management requirements as mainstem projects; should be included in the water use database.
b. Ecology must collect data on actual beneficial use as of July 1, 2006 on the mainstem and the tributaries and use that as the baseline for measuring the amount and success of any conservation projects on tributaries and mainstem
c. Ecology must evaluate methods to protect conserved water "instream" so that it will not be put to use by other downstream users and maintained in perpetuity to enhance instream flows.
d. Ecology must evaluate the useful life of conservation projects, and weigh alternatives for substituting other conservation methods when original infrastructure or methods are obsolete.

III. **The EIS must examine how the state management program will relate to the biological opinion under the FRCPS, and avoid a "jeopardy" determination under ESA**

a. The state must devise a method to work with federal agencies to ensure that its Columbia management program will not result in jeopardy to salmon.
b. The state must retain management flexibility to adjust its management program to comply with the upcoming revised BiOP for FRCPS.
c. Before any new water rights for out of stream consumptive uses can be issued, Ecology must determine both how much water is needed to protect fish and meet water quality standards, and how much water has already been allocated. Detriment to listed salmon or steelhead species or the destruction or adverse modification of critical habitat must be avoided.
d. The EIS should evaluate the alternative of conditioning Voluntary Regional Agreements or new water rights on the attainment of instream flow levels prescribed in the FCRPS BiOp.

IV. **The EIS must examine a range of mitigation issues.**

a. Ecology should consider engaging in rule-making to fully explore, define, and weigh the costs, benefits, and environmental impacts of various mitigation approaches.
b. Mitigation from water conservation measures must be measured from the date July 1, 2006 onward, and must reflect an actual and permanent reduction in water use. Conservation cannot be calculated from observing the face value of a permit or water right if the entire water right has never been or is not being consistently put to beneficial use.
c. To preserve the legislative intent to protect and improve instream values, mitigation should be deemed adequate only if it meets a "no net loss" standard.
d. Net water savings should be calculated by subtracting the amount of water necessary to accomplish a beneficial use after the conservation measure has been implemented from the amount of water put to actual use to accomplish the same purpose at the same location prior to the implementation of the conservation measures.

e. Mitigation water must be added to the river from the same pool as the diversion point for the new water right. Mitigation water cannot be assumed to pass downstream to the diversion point if it must pass through one or more dams.

COMMENTS RELATING TO ESSHB 2860 AND SCOPING DOCUMENTS:

Section 5: Development and Maintenance of a Columbia River water supply inventory and a long-term water supply and demand forecast to protect instream flow.

ESSHB 2860 Section 1 (1) evinces a dual legislative intent to meet the economic and community development needs of people and the instream flow needs of fish through water resource management in the Columbia River basin. ESSHB 2860 authorized Ecology to develop a Columbia River Basin Water Management Program ("Management Program") to achieve this dual legislative intent, and Ecology indicated its intent to do so in initiating preparation of a non-project EIS for Management Program development. Thus, the issues addressed in Ecology's non-project EIS for the Management Program must adhere to statutory directives and focus on achieving the twin goals of the legislature.

The options proposed in the scoping document "Attachment A" related to developing a Columbia River water supply inventory and a long-term water supply and demand forecast are insufficient for four reasons:

1) In Attachment A, Section 5(1), Ecology misinterprets the statutory directive found in ESSHB 2860 Section 5 (1) that Ecology "shall work with all interested parties" to develop the inventory and forecast. It fails to mention a number of interested parties such as the Center for Environmental Law and Policy ("CELP"), hydropower industry representatives, utility ratepayers, commercial and recreational river users, commercial and sport fishermen, academics, and federal dam operators. These parties must be included in any alternative inventory and forecast development methodology analyzed under the EIS, for these groups hold information essential to completing the lists that the inventory must include under ESSHB 2860 Section 5 (1) (a) and (b). Ecology's failure to include information from these groups would violate the terms of ESSHB 2860, and would not protect instream flow as new water supplies are developed.

2) In Scoping Attachment A, Section 5(1), Ecology does not require that all data used to develop the inventory and forecast be data collected after July 1, 2006, as ESSHB 2860 clearly requires. ESSHB Section 5 (1) directs that, effective July 1, 2006, Ecology shall work with all interested parties to support the development of "new" Columbia River water supplies and to "protect" instream flow. Ecology cannot reasonably develop "new" water supplies or "protect" instream flow without first gathering baseline water inventory data and baseline instream flow level data measured from the date ESSHB 2860 becomes effective. Any alternative inventory and forecast development methodology analyzed under the EIS must specify that the inventory and measurements must date prospectively from July 1, 2006. Ecology's failure to include such baseline data measured prospectively from July 1, 2006 would violate the terms of ESSHB 2860, and would not protect instream flow as new water supplies are developed

3) In Attachment A, Ecology fails to address alternatives for defining "conservation project" and "water conservation [the projects] have achieved", though a list of each of these items must be included in the Columbia River water supply inventory under ESSHB 2860 Section 5 (1) (a). Any alternative inventory development methodology analyzed in the EIS must define "conservation project" and "water conservation... achieved" as water actually returned

to the Columbia to maintain and enhance July 1, 2006 instream flow levels, in step with ESSHB 2860's goal to protect instream flow while supporting the development of new water supplies in the Columbia River.

4) In Scoping Attachment A, Ecology fails to address alternative levels of precaution it will use in acting on the long-term water supply and demand forecast to protect instream flow, as required by ESSHB 2860 Section 5 (1). These alternatives must account for the varying degrees of uncertainty inherent in water demand and supply predictive modeling, and address how these degrees of uncertainty inherent in the modeling results will be used to discount or inflate estimates required by ESSHB Section 5 (1) (b) of cost per acre-foot, benefit to fish and other instream needs, benefit to out-of-stream needs, and environmental and cultural impacts. Erroneous estimates will be disastrous for instream flow protection and the development of new water supplies in the Columbia River.

Section 6: Establishment and Maintenance of a Columbia River mainstem water resources information system to better understand current water use and instream flows in the Columbia River mainstem.

ESSHB requires Ecology to establish and maintain a Columbia River mainstem water resources information system ("Information System") to better understand current water use and current instream flows in the Columbia river mainstem. Thus, any alternative for Information System establishment and maintenance analyzed in the EIS must be based on information generated after July 1, 2006, the effective date of ESSHB 2860. Predicting impacts of new out of stream uses on flow data generated prior to July 1, 2006 defeats the intent of the statute. Because information must be collected after July 1, 2006, Ecology's narrow focus on "existing sources" of information in Attachment A, Section 6 (3) is inappropriate, for no sources of information collected after July 1, 2006 currently exist. The legislative intent is clearly to consider "other available sources" in addition to those named. Hence, the impacts on effective water resource planning of alternative Information System data gathering and update procedures and schedules, and alternative data quality assurance mechanisms, must be addressed in the EIS.

Alternatives for the Odessa subarea (OSA)

This portion of the PEIS demonstrates many of the deficiencies seen in the scoping documents. The DS and scoping documents ask only for comments on ways to deliver CBP water to lands in the OSA. However, ESSHB Section 3 (3) (a) does not foreclose other options to rescue OSA irrigators. Other alternatives should be explored and carefully reviewed, and accompanied by appropriate SEPA, NEPA, and ESA consultations. Pursuant to WAC 197-11-442(2), CELP urges Ecology to consider all reasonable alternatives to the delivery of Columbia River water to the Subarea.

Ecology has historically mismanaged the finite resource of ground water in the Subarea by first over-appropriating it, and then permitting greater and greater annual reductions in the aquifer instead of enforcing against waste, demanding conservation and regulating junior users. The annual groundwater withdraws in the Subarea increased substantially between 1995 and 2000. Because Ecology decided to study in the same EIS the programmatic action of delivering water to the Subarea and the project actions of building an alternative feed route to Potholes Reservoir and diverting 30KAF of water to the Subarea, it must examine reasonable alternatives to providing Columbia Basin Project water to the Subarea. When "project and nonproject actions are

intertwined" and both are included in the same EIS, "SEPA requires an examination of reasonable alternatives to the nonproject action." Citizens Alliance v. Auburn, 126 Wn.2d 356, 365 (1995). Ecology should "describe the proposal in terms of alternative means of accomplishing the stated objective." WAC 197-11-442(2). Alternatives should be emphasized. Id. Therefore, CELP asks that the EIS & Ecology analyze the following alternatives.

1. Every attempt must be made to utilize aggressive conservation and efficiency measures, within the Subarea, in order to preserve the aquifer to a degree where it can continue to be utilized without the need to divert enormous amounts of the Columbia River.
2. Ecology must consider the alternative of not delivering CBP project water to the Subarea and what avenues would be available to continue limited or different farming. This study should include a cost/benefit analysis that includes the benefit of more water for instream flow values and hydroelectricity production as well as lower infrastructure and long-term maintenance costs associated with canal construction.
3. Ecology must consider emphasizing dry land or low consumptive use crops in the Subarea as well as the buy-out of irrigated farms - particularly those farms that are voluntarily quitting the farming business. One farm in the Subarea has already approached Ecology with such a proposition. This farm comprises 12,000 acres and holds senior water rights to 30,000 acre-feet per year. Taking this farm out of production would decrease water need in the Subarea by approximately 30,000 to 36,000 acre-feet per year. Interestingly this is the current number of acre-feet the Bureau is hoping to send to the Odessa as defined in a Memorandum of Understanding with the BOR. It will be analyzed as a project level action in the PEIS.

The water conservation measures outlined above must be based upon actual conservation of water. This means the difference in actual beneficial use as of July 1, 2006 and subsequent actual use. Additionally, "net water savings" must be calculated in the same manner.

The conservation projects, both generally and those utilized to provide water to the Subarea, must be evaluated with the protection of instream flows as their baseline. Therefore, if the result of "actual" conservation is a negative impact on instream flows then it is not a viable conservation project.

Moreover, an unbiased, scientifically defensible study of the hydrogeology in the Subarea must be conducted in order to apply and use the best conservation and efficiency practices. Even temporarily conceding that CBP water is used, this study should still be completed prior to water delivery to maximize water efficiency and benefits at minimum costs. While this study is taking place Ecology should study a range of short-term solutions including, crop rotation, irrigating fewer acres, dry land farming, and subsidization of pumping and well-casing costs.

Lands to receive Columbia River water should be either those closest to the East Low Canal (ELC) or those irrigators who can prove highly efficient irrigation practices. This would limit additional infrastructure costs and provide an incentive to cut down on waste. Metrics should be created for measuring efficiency including "highly efficient irrigation practices" or type of crop, technology used, historical usage, etc. Lands away from the ELC should be encouraged to switch to dry land farming.

The EIS should weigh alternatives for evaluating conservation projects using various methods for defining consumptive use. Modeling should be done to create greater accuracy in return flow estimations, based on crops, conveyances, irrigation type, soil type, geology, etc. Furthermore, actual

amounts of water diverted should be calculated starting on July 1, 2006 using a meter and not based on historical estimates.

Finally, Ecology must examine the cumulative impacts of these projects as they relate to future development of the Second Half of the Columbia Basin Project. The CBP is authorized to irrigate an additional 358,000 acres, nearly all of which fall within the Subarea. A cumulative impact analysis is required when "the project under review will facilitate future action that will result in additional impacts." Tucker v. Columbia River Gorge Comm'n, 73 Wn. App. 74, 81-83 (1994). More importantly, this project is not "substantially independent of the subsequent...phases." Boehm v. City of Vancouver, 111 Wn. App. 711, 720 (2002). The completion of the Second Half, which compromises almost half of the Subarea, cannot go forward without the development of means to deliver Columbia Basin Project water to the Subarea. There is little doubt that the creation of an alternative feed route and diversion of Columbia Basin Project water to the Subarea is simply the first step in the completion of the planned Second Half of the CBP. These initial steps of creating more infrastructure and capacity are part of the larger design for completion of the project. Therefore, the cumulative impacts of full Second Half development must be analyzed in this PEIS.

Administering a program for voluntary regional agreements (VRAs):

The programmatic section of the EIS mandates examination of a proposal for the creation and administration of voluntary regional agreements. The project level section of the EIS mandates the examination of a specific voluntary regional agreement submitted to Ecology by the Columbia Snake River Irrigators Association (CSRIA). It is premature and inappropriate for this EIS to encompass the latter. It is evident that the programmatic level analysis of VRAs will seek to create terms, definitions, procedures, standards, and complete data in order to administer the program. Prior to the creation of the program no VRA should be proposed much less analyzed. In the absence of a formalized program, an analysis of the CSRIA VRA would be improper and violate SEPA rules prohibiting the application of a narrow review to a broader issue. Therefore, CELP asks that the EIS not evaluate the CSRIA VRA until after Ecology has properly created a program to administer VRA.

Furthermore, CELP believes that the implementation of VRAs is more properly subject to rulemaking under the Washington Administrative Procedures Act and should therefore be removed from the PEIS on this basis. However, if Ecology chooses not to proceed via a rulemaking process, CELP submits the following comments relating to the creation and administration of VRAs.

As stated above, since Ecology has intertwined nonproject and project level actions regarding VRAs, it must examine all alternatives to the nonproject action. This includes the "no action alternative" – meaning, continuing to process only individual water right applications pursuant to the existing water code. Ecology and this EIS should take a long look at the status quo and the protections for instream flows that the existing process provides.

Under existing water application and consideration processes (which were not disturbed by ESSHB 2860) an applicant can gain Columbia River water rights through consultation with the tribes and other agencies, after which individualized mitigation measures are devised and applied. An example of this successful process is the water right obtained in 2005 by Berg Farms (see permit, attached). The Bergs received a right to divert 52 cfs from the river, and WDFW, the tribes, NOAA Fisheries, and others were satisfied with the mitigation offered - which included the Bergs paying for irrigation efficiencies in a tributary, surrendering unused water rights, paying for fish passage enhancements, and pledging to use state-of-the-art irrigation efficiencies. This shows that the current system works, and it must be viewed as a benchmark against which to measure other alternatives such as VRAs.

Importantly, in order to assure "no negative impacts" the evaluation of the program must be based on its success in maintaining instream flows. It is premature for Ecology to enter into any VRA before September 2007. It must first establish the baseline data and criteria necessary to satisfy the requirement in ESSHB 2860 Section 4(2)(a) and (b) that there will be "no negative impact" on Columbia mainstem flows in July and August, and Snake River flows from April through August. Because the law does not take effect until July 1, 2006, baseline data upon which to measure "no negative impact" will be unavailable until at least July 2007. The programmatic EIS should evaluate whether one year of baseline flow data is sufficient to form the necessary measuring stick for any VRA.

The EIS should also evaluate the appropriate length and expiration dates for potential VRAs. CELP recommends that such agreements be executed for no longer than 2-year periods, with the option for two-year renewals. The effective dates of VRAs should not extend beyond June 30, 2012.

CELP strongly recommends that VRAs be well-grounded in basic contract law, which mandates contract terms which can be enforced and will bind all benefited parties. VRAs should not be open-ended as to the amount of water to be allocated, the locations of the eligible water applicants, or the identities of the eligible water applicants. Furthermore, the VRAs should be limited in geographic scope to river segments between existing dams; otherwise circumstances beyond the control of parties to the agreement (dam operators) could adversely affect the availability of water to protect instream resources.

All proposed VRAs should undergo individualized SEPA analyses, as well as a maximum net benefits analysis under RCE 90.54.020(2).

Supply and demand issues:

In order for Ecology to develop a water supply inventory and long-term supply and demand forecast it must first quantify and document current water use as opposed to rights still being held in inchoate status. All other projects relating to release of new water rights should be put on hold until an accurate picture of actual water use in the Basin is obtained. The EIS and Ecology must also ground-truth archived information about projected water demand as reflected in backlogged permit applications. CELP strongly suspects that water demand estimates for Columbia River water are and have been vastly overestimated, based upon data that no one has as yet bothered to verify as to the validity and nature of long-pending applications. When all appropriate data is gathered, various predictive models should then be analyzed for their usefulness in forecasting supply and demand numbers. When examining supply forecasts Ecology must consider climate change as well as the possibility of Canada not revoking the Columbia River treaty in 2024. These are both very real and imminent issues that could drastically reduce supply of Columbia River water in the not-too-distant future.

IN CLOSING.....

In summary, CELP is concerned with the programmatic environmental impact statement in general and most of the issues listed for study specifically. In CELP's opinion, the decision not to prepare an environmental checklist, while within the discretion of the agency, has deprived the public of a means to submit targeted and meaningful comments regarding the full range of alternatives and impacts of this legislation. The problems facing the survival of listed salmonid species and the need to curb the unrepentant desire for even greater water diversions from the Columbia River are not addressed in the scope of the PEIS as it currently exists. CELP's comments reflect the common sense approach to managing a limited resource; namely, prior to making any

long-term and irreversible decisions the basic questions of how much, where, when, and why must be answered. While sections of the PEIS propose to quantify a supply and demand forecast any result would naturally be handicapped by the lack of information on current water use (both legal and illegal, permitted and exempt). Before proceeding with drastic measures to provide new water rights Ecology should do everything it can to document current water rights and prepare a comprehensive water budget for the river. Proceeding blindly to implement this legislation will only result in greater harm to endangered species and an inequitable use of the public's funds and precious water resources. Ecology must proceed with precaution or the legacy it leaves for the future residents of Washington State will be one of unmitigated consumptive abuse of the Northwest's most dominant river.

Sincerely,

Shirley Waters Nixon, Acting Executive Director

Patrick Williams, Staff Attorney

Enclosures: Berg Farms Water Permit
Quad Cities Water permit
Settlement agreement in CELP vs. Ecology & Quad Cities

ORIGINAL

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

CENTER FOR ENVIRONMENTAL LAW & POLICY, Appellant, v. STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY, and CITIES OF RICHLAND, KENNEWICK, PASCO and WEST RICHLAND, Respondents.	PCHB No. 02-216 STIPULATION, SETTLEMENT AGREEMENT AND ORDER OF DISMISSAL

The parties, Center For Environmental Law and Policy (CELP), the Washington State Department of Ecology (Ecology), and the Cities of Richland, Kennewick, Pasco and West Richland (collectively Quad-Cities), through their attorneys, Karen Allston and Shirley Nixon (for CELP), Assistant Attorneys General Barbara Markham and Sarah Bendersky (for Ecology), and Tom Pors (for the Quad-Cities) enter into the following:

STIPULATION

1. On November 19, 2002, Ecology issued a Report of Examination to the Quad-Cities approving with conditions application S4-30976 for a municipal, industrial, and commercial water right from the Columbia River.

2. On December 18, 2002, CELP appealed the Report of Examination to the Pollution Control Hearings Board.

3. To avoid the costs, time, and uncertainty associated with litigation, the parties have entered into the following SETTLEMENT AGREEMENT to fully and finally resolve CELP's appeal.

SETTLEMENT AGREEMENT

1. Within 30 days of dismissal of this case by the PCHB as contemplated by this SETTLEMENT AGREEMENT, Ecology will issue a water right permit to the Quad-Cities.[1] Except as modified by the terms of this SETTLEMENT AGREEMENT, the permit will be consistent with the terms contained in the November 19, 2002, Report of Examination. The permit will include the ROE conditions and Recommendations A through I, and the terms specified in paragraphs 2,3,6.7, 8, and 11 of this SETTLEMENT AGREEMENT.

2. The permit issued to the Quad-Cities will expressly specify that any time Ecology approves the use of mitigation to offset diversion increments after the first increment (the first increment is defined as the first 10 cubic feet per second (cfs) of diverted water), Ecology shall issue an order that is subject to appeal to the Pollution Control Hearings Board or any successor body with jurisdiction to hear appeals from Ecology water right decisions.

3. The permit issued to the Quad-Cities will expressly set forth the additional conservation requirements set forth in Exhibit A to this Settlement Agreement, The permit will specify that these conservation requirements will be the minimum conservation requirements that the Quad-Cities shall meet during the entire life of the permit. If the Department of Health adopts more stringent rules relating to water conservation, the Quad-Cities will plan and implement their plans to meet or exceed the more stringent rules.

4. With respect to the Quad-Cities' diversion of the first increment (10 cfs) of water, the right to divert water will be interrupted when the specified flow conditions described in Condition E are not met, unless the following mitigation for consumptive use is in place. Table 5 in the November 19, 2002 Report of Examination identifies the two groups of

water rights Ecology currently intends to use as mitigation for the first increment of Quad-Cities' water use. The first group is listed in the first 6 columns of Table 5 under the heading "Department of Ecology Trust Water Rights" (hereafter referred to as "the Buckley trust water rights"). The second group is listed in the second half of the table and labeled as the Grandview Farm Water Rights (hereafter referred to as "the Simplot water"). To make the Buckley trust water rights eligible to be considered as mitigation for the Quad-Cities' water right, Ecology will change the purpose and place of use of the Buckley water rights so that the purpose of use includes "mitigation for municipal use" and so that the place of use includes "the McNary Pool of the Columbia River". To make the Simplot water eligible to be considered as mitigation for the Quad-Cities' water right, Ecology will complete the steps necessary to put the Simplot water into trust with the purpose of use designated as "mitigation for municipal use" and the place of use designated as "the McNary Pool of the Columbia River." If Ecology is unable to complete the acquisition of the Simplot water, Ecology must acquire and put into trust other water rights from the McNary Pool of an equivalent quantity as the Simplot water. The intent of this paragraph is that trust water rights used for mitigation shall be from the McNary Pool and of equivalent quantity and period of use as shown in Table 5 of the ROE.

5. CELP believes that water already placed in trust should not subsequently serve as mitigation for later appropriations. CELP does not believe that the Buckley trust water rights constitute sufficient mitigation to offset the Quad-Cities' diversion of water from the Columbia River. In the interests of settlement, however, and so long as the trust water right certificates are amended as described in the preceding paragraph, above, CELP is accepting the use of these rights as mitigation for a portion of the first 10 cfs of the Quad-Cities' diversion. The Parties agree that they will not cite the use of this mitigation, or the fact of entry into this SETTLEMENT AGREEMENT, for legal or policy precedent for future mitigation efforts.

6. To determine the amount of perpetual mitigation for the first increment of water use, Ecology has used an 80 percent consumptive use estimate. *I.e.,* Ecology has assumed that for the first 10 cfs of diverted water, there will be a consumptive use of 8 cfs. Concurrent with the times that the Quad Cities submit each successive Regional Water Forecast and Conservation Plan (RWFCP) Ecology will reevaluate this 80 percent consumptive use estimate based on then-current metering and other data showing actual water returned to the system, and will assure that the appropriate amount of water-for-water mitigation is in place. If consumptive use increases above 80%, in order to keep the diversion for the first 10 cfs not subject to interruption. Ecology will transfer into trust additional water rights from the McNary Pool to offset the additional consumptive use.

7. Any future proposed mitigation plans submitted by the Quad-Cities for review by Ecology shall be governed by the following terms:

a. Mitigation for appropriations beyond the first ten cfs will be according to the following "fifty percent or more/fifty percent or less" formula: fifty percent or more of water consumptively used by the Quad Cities during times when flows established in Condition E are not met will be mitigated by flow replacement using water upstream of the McNary Dam in the Columbia River system; the balance of the mitigation will be accounted for by fish habitat improvements that benefit Columbia River system fish at least to the same extent as would replacement water.

b. For any habitat project mitigation proposed by the Quad-Cities under this provision, the Quad-Cities will demonstrate based upon best available science and other applicable legal requirements that the proposed mitigation will benefit Columbia River system fish at least to the same extent as would replacement water.

c. In determining whether any habitat project mitigation proposed under this provision is acceptable. Ecology will consult with and give a high degree of deference to the Washington State Department of Fish and Wildlife, the Confederated Tribes and

Bands of the Yakama Nation, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes of the Warm Springs Reservation of Oregon.

d. *Reopener.* During the life of the Quad-Cities' permit, any party hereto may request that the other parties accept a mitigation formula using a percentage different than the fifty or more-fifty or less percentages specified in paragraph 7a. Any agreement among the parties to revise these percentages shall be documented through a written amendment to this agreement signed by all of the parties.

8. The permit issued to the Quad-Cities will expressly specify that 10 cfs of the Quad-Cities' water right is allocated from the John Day/McNary Pools reservation for municipal water use pursuant to WAC 173-531A-050. Ecology will reduce the amount of water available from the municipal reservation established under WAC ch. 173-531A to reflect this allocation to the Quad-Cities.

9. Thirty-one days after: (a) the permit is issued, provided there are no appeals, or (b) after all appeals are finally terminated, Quad-Cities has the affirmative obligation to:

a. Withdraw all pending applications for new water rights except for certain groundwater applications that are for supplemental rights for alternate places of withdrawal. A list of all pending applications to be withdrawn pursuant to this section is attached to this agreement as Exhibit B. The City of Richland shall request to Ecology in writing that Applications G4-30990, G4-30981 and G4-30980 be issued as supplemental to the annual quantity of the Quad-Cities' permit S4-30976. The City of West Richland shall request to Ecology in writing that Applications G4-32304 and G4-32395 be issued as supplemental to the annual quantity of the Quad-Cities' permit S4-30976.

b. Abandon or voluntarily relinquish all water rights that the Quad-Cities are not currently using. A list of all water rights (represented by claims, certificates, or permits) to be abandoned or voluntarily relinquished pursuant to this section is attached to this agreement as Exhibit C.

10. Ecology considers the top three paragraphs at the top of page 11 of the November 19, 2002, Report of Examination stricken from the ROE. The permit will include no reference to the top three paragraphs at the top of page 11 of the Report of Examination or the content therein, and Ecology agrees that the language and content therein has no precedential effect.

11. The non-interruptibility of water use beyond the first 10 cfs requires that the Quad Cities submit a mitigation plan to Ecology for approval. Unless extraordinary circumstances exist, when the Quad-Cities proposes a mitigation plan for future diversion increments under their water right, the Quad-Cities will submit their plan at least one year before the Quad-Cities needs a final decision from Ecology. Ecology will use this one year period for public notice, consultation, and to accomplish any necessary water right trust transfers. For purposes of this section "extraordinary circumstances" is defined only as factual circumstances that establish the need for an Ecology response time of less than one year. In no case will Ecology shorten its review and decision time so as to preclude Ecology from fulfilling its public notice and consultation obligations.

12. Ecology will provide input and actively participate in the Department of Health's statewide rulemaking efforts required by the Laws of 2003, E2SHB 1338, Section 7, addressing (a) conservation requirements, (b) needs assessments and (c) needs projections for water systems plans.

13. By April 30, 2004, Ecology will complete its development of a guidance document describing how and when it will perform a "maximum net benefits analysis" in the context of water resource rulemaking. In developing this guidance document Ecology will

seek input from CELP and other interested parties. At a minimum, Ecology agrees to meet with representatives from CELP every other month between September 2003 and April 2004 to review, discuss, and consider CELP proposals regarding the scope and content of this guidance document.

14. Ecology will not file a CR 102 containing draft rule language pertaining to the rulemaking for the Columbia River pursuant to the Columbia River Regional Initiative until after Ecology receives a final report and recommendations from the National Academy of Sciences (NAS) panel.

15. Subject to the limitations contained in this section. Ecology will not process any applications for new water rights permits from the Columbia River during the pendency of the Columbia River Regional Initiative process and before the date that rules related to that process become effective, or until January 1, 2005, whichever date is earlier. Ecology will abide by this suspension to the extent it is authorized to do so by law. Ecology will process applications during the suspension only: (a) if a court orders it to process an application, or (b) if an application is for a nonconsumptive use that would substantially enhance or protect the quality of the natural environment, or (c) if the agency must process an application to address a public health and safety emergency. The Quad-Cities agree not to sue or otherwise seek court orders compelling Ecology to process any pending application for a new water right from the Columbia River during the time frame set forth in this paragraph.

16. CELP agrees not to appeal, or assist anyone else in an appeal, of the permit issued pursuant to this SETTLEMENT AGREEMENT or any modification to the purpose or place of use of the Buckley trust rights, except that the permit issued may be appealed if its terms varies from the terms of this SETTLEMENT AGREEMENT. CELP and the Quad-Cities reserve the right to appeal any other future appealable orders of Ecology, including those described in paragraph 2 of this SETTLEMENT AGREEMENT.

17. Based upon the terms of this SETTLEMENT AGREEMENT, the parties jointly request that the PCHB enter the following order dismissing this case with prejudice.

CHRISTINE O. GREGOIRE
Attorneys for Department of Ecology

Dated: 8/7/03

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Dated: 8/7/03

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I. ORDER OF DISMISSAL

This matter having come before the Pollution Control Hearings Board upon the joint motion of the parties and based upon the SETTLEMENT AGREEMENT, and the Board having reviewed the SETTLEMENT AGREEMENT and the records and files herein, and having determined that the parties have agreed to a full and complete settlement of this appeal, now, therefore,

IT IS ORDERED that:

1. The appeal of *CELP v. Ecology and the Cities of Richland, Kennewick, Pasco and West Richland*, PCHB No. 02-216 is dismissed with prejudice;

2. Each party is to bear its own costs and fees.

Dated this 19th day of August, 2003.

POLLUTION CONTROL HEARINGS BOARD

ROBERT V. JENSEN, Presiding

KALEEN COTTINGHAM, Member

WILLIAM H. LYNCH, Member

Presented by:

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BROOKE & MILLER LLP
(509) 735-1542

H. To access water beyond the initial 10 cfs, the Quad Cities shall submit an updated RWFCP to the Department of Health and the Department of Ecology on a six-year schedule consistent with the schedule for review of water right quantities. The Quad Cities shall coordinate the preparation and completion of their individual water system plans and related supply, demand, and conservation programs. Prior to completion of the plans, the RWFCP will be completed jointly by the Quad Cities to compare demand to available supply and to evaluate the conservation achieved and the conservation projected resulting from implementation of the program described in section 6. The Quad Cities may submit the RWFCP for access to additional water, under the same process described in this condition, prior to any six-year interval if demand forecasts or other circumstances warrant earlier review. The full quantities of water recommended for a permit in this report may be appropriated in six-year increments associated with submittal of the RWFCP, and only when the applicable minimum instream flow is equaled or exceeded, or when the consumptive water use associated with appropriations under this permit is mitigated. Ecology will review the demand estimates, the water conservation elements of the plan, return flows estimates, and other relevant information contained in the plan that comprises the mitigation or flow replacement proposal. Following public comment, Ecology would approve, conditionally approve, or deny the proposed mitigation plan through an Order. If the Order denies the proposed mitigation or flow replacement proposal, then the appropriation for that 6-year increment would be subject to interruption when the flow objectives in this permit are not met, as described in Condition E-

1. The non-interruptibility of water use beyond the first 10 cfs requires that the Quad Cities submit a mitigation plan to Ecology for approval. Unless extraordinary circumstances exist, when the Quad Cities propose a a mitigation plan for future diversion increments under their water right, the Quad Cities will submit their plan at least one year before the Quad Cities need a final decision from Ecology. Ecology will use this one year period for public notice, consultation, and to accomplish any necessary water right trust transfers. For purposes of this section "extraordinary circumstances" is defined only as factual circumstances that establish the need for an Ecology response time of less than one year. In no case will Ecology shorten its review and decision time so as to preclude Ecology from fulfilling its public notice and consultation obligations. The mitigation required for withdrawals of water in the succeeding six-year periods shall be proposed by the Quad Cities in their six-year RWFCPs for approval by the Department of Ecology.

2. Upon issuance of an Order by Ecology approving in conformance with Recommendation E of this permit one or more trust water rights or approving another replacement water program or a mitigation program proposed by the permittee to offset the full projected consumptive use during periods when flow objectives are not met, the six-year appropriation will not be conditioned as interruptible.

3. The maximum quantity of withdrawals of water requiring mitigation during the succeeding six-year periods will be presented in the RWFCPs and determined by subtracting estimated return flow from the maximum diversion amount. Return flow calculations shall be based on best available science and shall reflect seasonal conditions. During the course of that six-year period, actual quantities to be mitigated will depend on daily recording and monthly reporting of actual

water use under this permit, return flow estimates corresponding to the season of water use, and whether or not the then current flow objectives are achieved during that period.

Each RWFCP shall include a Conservation Program demonstrating how the best available and reasonable conservation technology will be implemented in the subsequent six-year period. The Conservation Program shall meet, as a minimum, current (as of date prepared) Department of Health requirements as well as the conservation conditions described below. In addition, the RWFCP with its Conservation Program shall be submitted to the Department of Ecology for review and approval consistent with the six-year schedule for reviewing water rights. The RWFCP shall propose and implement water conservation activities in the following areas: reducing leakage and unaccounted for water from the municipal water supply system; and monitoring, accounting for (separately) and reducing commercial, industrial, residential (indoor) and landscape water use. The Conservation Program shall include a detailed profile of current water use characteristics for each conservation category defined above including their total annual demand, average demand, unit demand and peak demand. Compliance with the Conservation Program for each six year period shall be a condition of the permit.

The Quad Cities RWFCP shall comply with Department of Health rules *(.Conservation Planning Requirements, Washington State Department of Health PUB 331-008, March 1994)* which currently require that these plans contain, as a minimum:

> *Water Use Data Collection Requirements.* Systems must report the best currently available data on water use for the categories of use, which are identified by the department.
> *Water Demand Forecast.* A complete forecast, including an estimate ol reduction of water use from implementation of water conservation measures must be developed.
> *Conservation Program.* A Conservation Program must be developed anc implemented. The Conservation Program elements must include Conservation Objectives; Evaluation of Conservation Measures; anc Identification of Selected Conservation Activities.

If the Department of Health adopts more stringent rules relating to water conservation, the Quads Cities will plan and implement their plans to meet or exceed the more stringent rules.

In addition to the general water conservation requirements described above, th following Conservation Program activities are required as conditions of thi permit. The Quad Cities will initiate development of the following program within one year after issuance of the permit and will adopt them fc implementation within two years of the date of permit issuance.

For the purposes of the following conservation program elements, the ten "implement" means obtaining and expending funding for capital facilities an ooerational staff, program assessment, and monitoring and reporting associate

with each program element in a manner and on a schedule to achieve, and once achieved to maintain, the stated goal or target.

i. Leak Detection Program

The Quad Cities shall implement a program to reduce leakage and unaccounted for water for each water supply system within the Quad Cities area. Leakage and unaccounted for water includes water loss due to leaking water mains and smaller distribution lines and inefficient fixtures, including inaccurate metering. Unaccounted for or unmetered water consumption also includes uses such as street sweeping, contractors, flushing hydrants, dust control, and erosion control by the Cities, County and private parties. The goal of the program is to reduce unaccounted for water to no more than 10% of the total diversion by 12/31/2010-The improvements to achieve the goal that are not concluded by 2010 must be identified and incorporated in the State approved Water System Plan for the city's capital improvement program with a completion date of no more than 2016.

ii. Large Meter Testing Program

The Quad Cities shall implement a program by December 31, 2005 to test all large meters (greater than 2-inches diameter, primarily used in commercial/industrial connections) and repair or replace all meters found to be defective. The testing and maintenance program will continue after the December 31,2005 date on a schedule consistent with the manufacturers recommendations.

iii. Residential Meter Repair/Replacement Program

The Quad Cities shall implement a program by December 31, 2005 to test and repair or replace all residential water meters on a schedule consistent with manufacturers' recommendations. The testing and replacement program will continue after the December 31,2005 date on an appropriate schedule to ensure that the users meters are reasonably accurate.

iv. Residential Retrofit Program

The Quad Cities shall implement a residential retrofit program by December 31, 2004 to provide the public with low-flow shower heads, toilet tank displacement bags, leak detection tablets and other residential water conservation measures. The initial program will be completed by December 31,2008.

v. Source Metering Replacement and Improvement

The Quad Cities shall implement a source metering replacement anc improvement program by December 31, 2005 to ensure that all watel sources are accurately monitored.

vi. **Develop a Water Audit Program for Large Water Users**

The Quad Cities shall develop and implement a water audit program for large (commercial, industrial and institutional) water users. At least 50% of the large water users will be audited by December 31, 2007 and the remainder of the audits completed by 2010. The water audit program shall continue on an ongoing repeat schedule for those large customers where the audit suggests that reasonable additional water use reduction is possible.

vii. **Develop a Joint Plan with Irrigation Districts to address Urban Area Irrigation Needs**

The Quad Cities shall pursue development of a Joint Plan with Irrigation Districts whose service areas overlap with the Quad Cities service area. The Plan shall address irrigation water supplies for landscape use (e.g., which entity supplies landscape water and Quad Cities policies on serving those areas) and landscape water demands during water-short periods when Irrigation Districts may prorate their water users. This plan will be completed by December 31, 2009.

viii. **Develop an Integrated Water Shortage and Drought Response Plan**

The Quad Cities shall develop an integrated Water Shortage and Drought Response Plan for periods when water demands exceed allowed diversions. This plan will be completed by December 31, 2007.

ix. **Develop a recommended School Education Program**

The Quad Cities will work with the school districts within the UGA for the Quad Cities to define appropriate classroom materials and assist the school districts with implementation of the program. The plan will be outlined and a recommended program be adopted for initial implementation by the cities within two years from the issuance of the permit. The implementation in the schools will be on the schedule approved by the school districts.

x. **Develop a General Public Education Program.**

The Quad Cities will develop a public education program as committed to in the Regional Water Supply Plan that will include outreach to all customers emphasizing the efficient use of both indoor and outdoor watering, consumptive use records on water bills, the promotion of water efficient devices such as low flow shower heads, and regional publications explaining conservation programs. This program shall be developed by December 31, 2005 and implemented on an on-going basis

Quad Cities
Water Rights for Settlement
Exhibit B - Pending Applications to be Withdrawn

Water Right Number	Instantaneous Quantity (gpm)^	Annual Quantity (Acre-Feet)	Source	Priority
Applications to be Withdrawn				
Pasco				
G3-29957	2.500	4,032	Wellfield	April 16,1996
S3-29979	7,181	6,400	Columbia River	August 6,1996
Richland				
G4-30262	250		Well	May 24,1990
S4-30185	5,660	2,042	Columbia River	November 22, 1989

Quad Cities
Water Rights for Settlement
Exhibit C - Water Rights and Claims to be Voluntarily Relinquished

Water Right Number	Instantaneous Quantity (gpm)	Annual Quantity (Acre-Feet)	Source	Priority
Kennewick				
Water Right Claim No. 301518	44,800	6,000	Columbia River	July 1906
Richland				
Claim 063206	500	80	Well D-15	May-44
Certificate 5532	2,000	3,200	Well	March 21, 1960
Certificate 6134	1,200	1,920	Well	December 18, 1961

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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DEPT. OF ECOLOGY Received JUN 5 2006 CENTRAL REGION OFFICE

PERMIT

TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON

☒ Surface Water (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)

☐ Ground Water (Issued in accordance with the provisions of Chapter 263, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE	APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
June 24, 1980	S4-34553	S4-34553P	

The applicant is hereby granted a permit to appropriate the following public waters of the State of Washington, subject to existing rights and to the limitations and provisions set herein.

NAME: Berg Farms LLC

ADDRESS (STREET)	(CITY)	(STATE)	(ZIP CODE)
PO Box 127	Paterson	WA	99345

PUBLIC WATERS TO BE APPROPRIATED

SOURCE: Columbia River/John Day Pool

TRIBUTARY OF (IF SURFACE WATERS): Pacific Ocean

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FEET PER YEAR
52.55		12,659

QUANTITY, TYPE OF USE, PERIOD OF USE: 52.55 cubic feet per second, 12,659 acre-feet per year for irrigation of 3200 acres from March 1 to October 31.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION–WITHDRAWAL: Approximately 2000 feet south and 250 feet east from the north quarter corner of Section 8.

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP N.	RANGE, (E. OR W.) W.M.	W.R.I.A.	COUNTY
SW¼NE¼	8	5	26 E	31	Benton

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

All of Sections 1, 2, 3, 10, 11, 12, 13, 14, and 15 AND the N½ of Section 22 and the N½ of Section 23, ALL in T. 6 N., R. 25 E.W.M., and ALL of Sections 6, 7, and 18, ALL in T. 6 N., R. 26 E.W.M., Benton County, State of Washington, EXCEPT that portion of said Section 12 described as follows:

Commencing at the northeast corner of said Section 12; thence south along the east line thereof 3461.00 feet, more or less, to a point on the centerline of existing Benton County road (Lenzie Road); thence westerly along said centerline 680.00 feet to the true point of beginning; thence northerly and parallel with the east line of said Section 12 a distance of 625 feet; thence westerly and parallel with said Benton County road 1400.00 feet; thence southerly and parallel with said east line 1400.00 feet; thence easterly and parallel with said county road 1400.00 feet; thence northerly and parallel with said east line 775.00 feet to the true point of beginning. AND EXCEPT roads AND EXCEPT portion deeded to State of Washington for highway by Auditor's File No. 867323.

ALSO EXCEPTING that portion described as follows:

Beginning at the northeast corner of Section 12, T. 6 N., R. 25 E.W.M., thence south along the east line thereof a distance of 3461 feet more or less to a point on the centerline of the existing county road (Lenzie Road); thence westerly along said center line a distance of 1350 feet to the true point of beginning; thence northerly and parallel to the east line of said section a distance of 625 feet; thence easterly and parallel to said county road a distance of 370 feet; thence southerly and parallel to the said east line a distance of 625 feet to the center line of the county road; thence westerly to the true point of beginning, EXCEPT the existing county road right-of-way, approximately five acres, all in Benton County, Washington.

DESCRIPTION OF PROPOSED WORKS

Description of Irrigation System

A pumping station consisting of six turbine pumps is located at the point of diversion on the John Day Pool of the Columbia River, approximately ½-mile southeast of the town of Paterson, WA. The pumps are rated at 400, 600, 700, 800, 1000, and 1500 horsepower, for a total of 5000 horsepower. The 400 horsepower pump is variable to supply water at a constant pressure, and the pumps can be operated in various combinations. This enables the system to efficiently accommodate variations in demand while providing the most efficient use of power and water possible. The pumps are fed by a 42-inch diameter, 1400-foot siphon tube that extends into the Columbia River. The intake end of the siphon tube is screened with 1/64-inch mesh. The pumps discharge through various sized (12, 14, and 18-inch) pipes into header pipes that combine at a 'Y' and carry the water approximately 1.6 miles through a 42-inch underground pipe to a booster pump station. Five 200 horsepower booster pumps at the station assist in pushing the water the additional three to six miles to the place of use. There are 33 center pivot irrigation systems installed at the place of use. At full capacity the pump system would be capable of operating 26 circles simultaneously. The center pivot systems are computer operated and equipped with drop hoses and 7.5 gallons per minute low pressure nozzles. The Bergs employ infra-red aerial photography and a water management service, which provides soil moisture measurements, daily water use, and weather forecast data, to maximize the efficiency of the irrigation system. Best management practices and specialized implements are utilized to maximize infiltration of water into the soil and prevent runoff and erosion.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	WATER PUT TO FULL USE BY THIS DATE:
Begun	October 31, 2006	October 31, 2007

PROVISIONS

The applicant may divert water under this authorization provided the following conditions are met:

Prior to issuance of this permit, Berg Farms will surrender to Ecology portions of Permit Nos. S4-25639 (G), (E), (D), and (B) P totaling 12,659 acre-ft/yr, 52.59 cfs, for the irrigation of 3200 acres, for which Berg Farms currently holds valid water right permit assignments.

The annual quantity herein allocated is a portion of the amount reserved by the adoption of the John Day/McNary Reservation. The priority date of this filing, as against other uses, is June 24, 1980.

(Provisions continued on Page 3)

This permit shall be subject to cancellation should the permittee fail to comply with the above development schedule and/or to give notice to the Department of Ecology on forms provided by that Department documenting such compliance.

Given under my hand the seal of this office at Yakima, Washington, this 23rd day of August 2005.

DEPARTMENT OF ECOLOGY STATE OF WASHINGTON

Department of Ecology

DATA REVIEW

OK

by

Robert F. Barwin, Section Manager

PERMIT

This authorization is subject to the following minimum flow provisions as specified in WAC 173-563-040 and WAC 173-563-050 and the following table. It is subject to regulation by the Department of Ecology for protection of instream resources whenever the March 1 forecast of April-September runoff at The Dalles is 60 MAF or less, and when gaged flows are predicted by the BPA 30-Day Power Operation Plan to violate the following minimum flow provisions at:

Primary Control Station(s): John Day
River Mile(s): 215.6

Minimum Average Weekly Flows
Columbia River Projects
(1,000 cubic feet/second)

PRIMARY CONTROL STATION:	Chief Joseph*	Wells/ Rocky Reach*	Rock Island & Wanapum*	Priest Rapids	McNary	John Day	The Dalles
RIVER MILE:	(545.1)	(515.6) (473.7)	(453.4) (415.8)	(397.1)	(292.0)	(215.6)	(191.5)
Jan	30	30	30	70	60	60	60
Feb	30	30	30	70	60	60	60
Mar	30	30	30	70	60	60	60
Apr 1-15	50	50	60	70	100	100	120
Apr 16-25	60	60	60	70	150	150	160
Apr 26-30	90	100	110	110	200	200	200
May	100	115	130	130	220	220	220
Jun 1-15	80	110	110	110	200	200	200
Jun 16-30	60	80	80	80	120	120	120
Jul 1-15	60	80	80	80	120	120	120
Jul 16-31	90	100	110	110	140	140	140
Aug	85	90	95	95	120	120	120
Sep	40	40	40	40	60	85	90
Oct 1-15	30	35	40	40	60	85	90
Oct 16-31	30	35	40	70	60	85	90
Nov	30	30	30	70	60	60	60
Dec	30	30	30	70	60	60	60

*For the reach from Grand Coulee through Wanapum, minimum average weekly flows shall be as shown above, or as necessary to maintain minimum flows (subject to low runoff and adjustment) at Priest Rapids, whichever is higher. As provided in WAC 173-563-050(1), the minimum average weekly flows set forth in this subsection are subject to a reduction of up to 25 percent during low flow years, except that in no case shall the outflow from Priest Rapids Dam be less than 36,000 cfs.

Use of water under this authorization shall be contingent upon the water right holder's utilization of up-to-date water conservation practices and maintenance of efficient water delivery systems consistent with established regulation requirements and facility capabilities.

Use of water under this authorization can be expected to be curtailed at least once in every 20 years.

Water available under this authorization will not provide a firm supply throughout each irrigation season.

This authorization is subject to Washington Department of Fish and Wildlife juvenile salmon and gamefish screening criteria (pursuant to RCW 77.16.220, RCW 77.55.040 and RCW 77.55.070). Please contact the Department of Fish and Wildlife, 600 Capitol Way N, Olympia, WA 98501-1091, Attention: Habitat Program, Phone: (360) 902-2534, or call (509) 575-2734 for the Yakima Construction Shop to obtain technical assistance for your project. Juvenile salmon screening criteria are attached to the Report of Examination if applicable to your diversion.

An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.

Water use data shall be recorded weekly. The maximum rate of diversion/withdrawal and the annual total volume shall be submitted to Ecology by January 31st of each calendar year.

The following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Claim/Certificate No., source name, annual quantity used including units of measurement, maximum rate of diversion including units of measurement, monthly meter readings including units of measurement, peak monthly flow including units of measurement, purpose of use, fish screen status, open channel flow or pressurized diversion, and period of use. In the future, Ecology may require additional parameters to be reported or more frequent reporting. Ecology prefers web based data entry, but does accept hard copies. Ecology will provide forms and electronic data entry information.

Chapter 173-173 WAC describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document entitled "Water Measurement Device Installation and Operation Requirements." Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.

A Proof inspection will be conducted prior to final certificate issuance. The certificate will reflect the extent the project is perfected within the limitations of the authorization. Aspects will include as appropriate the source hydraulically connected to surface water, system instantaneous capacity, beneficial use, annual quantity, and acreage.

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PERMIT
TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON

☒ Surface Water (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)

☐ Ground Water (Issued in accordance with the provisions of Chapter 263, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE	APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER
September 23, 1991 *	S4-30976	S4-30976P	

* The first ten cubic feet per second of this water right has a priority date of June 24, 1980, pursuant to WAC 173-531A-050(3).

NAME
Cities of Richland, Kennewick, Pasco and West Richland (c/o Richland)

ADDRESS (STREET)	(CITY)	(STATE)	(ZIP CODE)
PO Box 190	Richland	WA	99352-0190

The applicant is, pursuant to the Report of Examination which has been accepted by the applicant, hereby granted a permit to appropriate the following public waters of the State of Washington, subject to existing rights and to the limitations and provisions set out herein.

PUBLIC WATERS TO BE APPROPRIATED

SOURCE
Columbia River

TRIBUTARY OF (IF SURFACE WATERS)
Pacific Ocean

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE	MAXIMUM ACRE-FEET PER YEAR
178 [1]		96,619 [1]

QUANTITY, TYPE OF USE, PERIOD OF USE
Municipal, industrial, commercial. Year-round Period of Use.

[1] The projected maximum instantaneous and annual diversions from 2002-2008 are 10 cubic feet per second and 7227 acre-feet per year; additional quantities to meet projected demands beyond 2008 are to be determined by a six year review process as described in the Provisions of this permit. The maximum cubic feet per second and acre-feet per year quantities shown above are the maximums that can be used by 2051.

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION–WITHDRAWAL
Approximate location: Multiple points within the Cities of Kennewick, Pasco, and Richland service areas, including all the existing municipal diversions and treatment facilities in Kennewick, Pasco and Richland (see table below).

Location of Points of Withdrawal/Diversion on the Columbia River

CITY	MAP ID NO.	WATER RIGHT/OTHER ID NO.	LOCATION
Richland	R-1	Energy NW	NENW Section 2, T. 11 N., R. 28 E.W.M.
	R-2	Battelle	SWNE Section 14, T. 10 N., R. 28 E.W.M.
	R-3	S4-29941P	SWNE Section 14, T. 10 N., R. 28 E.W.M.
	R-4	W.S.U.	SWSW Section 24, T. 10 N., R. 28 E.W.M.
	R-5	SWC 9004	SWSW Section 24, T. 10 N., R. 28 E.W.M.
	R-6	S4-26404C Water Treatment Plant	NWNW Section 36, T. 10 N., R. 28 E.W.M.
		S4-27121C	
		SWC 9005	
	R-7	14030C Columbia Point	SWNE Section 13, T. 9 N., R. 28 E.W.M.
		G4-29214P	
		G4-29799P	
	R-8	Badger Mountain Irrigation District	SWSE Section 23, T. 9 N., R. 28 E.W.M.
Pasco	P-1	Water Treatment Plant	SWNE Section 31, T. 9 N., R. 30 E.W.M.
	P-2	S3-28791P (Kidwell)	W½ Section 18, T. 9 N., R. 29 E.W.M.
Kennewick	K-1	S4-25479C (SW Filter Plant)	SWSW Section 31, T. 9 N., R. 30 E.W.M.
	K-2	3897-A (Ranney Wells)	Govt. Lots 1 and 2, Section 35, T 9 N, R 29 EWM
	K-3	Corps of Engineers-Columbia Park (Multiple Points)	Sections. 27, 28, 29, 34, 35, T. 9 N., R. 29 EWM

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP N.	RANGE (E. OR W.) W.M.	W.R.I.A.	COUNTY
Refer to table above				37, 40, 31	Benton, Franklin

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

The water will be used within the area provided with urban water service by Kennewick, Pasco, Richland and West Richland, as identified in the six-year updates of the Quad Cities' Water System Plans, and as currently shown on Figure 1 (attached).

DESCRIPTION OF PROPOSED WORKS

The cities of Kennewick, Pasco and Richland will initially use their existing Columbia River water diversion and treatment facilities. Additional diversion/withdrawal facilities, including the potential construction of facilities capable of delivering water for storage and later withdrawal as part of an Aquifer Storage and Recovery (ASR) project and other pumps and pipes, will be added to the system incrementally as needed to respond to demand. Use of any new point of diversion will require the applicant to apply for and receive approval of a change of water right.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE:	COMPLETE PROJECT BY THIS DATE:	WATER PUT TO FULL USE BY THIS DATE:
October 1, 2003	October 1, 2050	October 1, 2051

PROVISIONS

Over the duration of this permit, diversion of water will not be permitted at any time the applicable flow objectives are not met UNLESS the consumptive portion of the diverted water is properly mitigated through such means as water transfers, replacements, habitat enhancements, or trust water right arrangements. The first ten cubic feet per second (cfs) of this water right are allocated from the John Day/McNary Pools reservation for municipal water use pursuant to WAC 173-531A-050.

The following conditions apply to this approval:

A. The Quad Cities shall provide municipal water to all municipal, industrial, and commercial users and uses within their urban service areas based on the Quad Cities' six-year updates of their Regional Water Forecast and Conservation Plan (RWFCP) described in Provision H.5.

B. This authorization is subject to Washington Department of Fish and Wildlife juvenile salmon and gamefish screening criteria (pursuant to RCW 75.20.040). Permit holders should contact the Department of Fish and Wildlife, 600 Capitol Way N., Olympia, WA 98501-1091, Attention: Habitat Management Division, Phone: (360) 753-3318 or call (509) 575-2734 for the Yakima Screen Shop to obtain specific gamefish (trout, bass, etc.) requirements for their projects.

C. An approved measuring device shall be installed and maintained for each of the sources identified by this water right in accordance with the rule "Requirements for Measuring and Reporting Water Use", Chapter 173-173 WAC.

Water use data shall be recorded daily. The maximum monthly rate of diversion/withdrawal and the monthly total volume shall be submitted to Ecology by January 31st of each calendar year. Ecology is requiring submittal of monthly meter readings to collect seasonal information for water resource planning, management and compliance.

The following information shall be included with each submittal of water use data: owner, contact name if different, mailing address, daytime phone number, WRIA, Permit/Certificate, source name, annual quantity used including units, maximum rate of diversion including units, monthly meter readings including units, peak monthly flow including units, Department of Health WFI water system number and source number(s), purpose of use, fish screen status, open channel flow or pressurized diversion and period of use. In the future, Ecology may require additional parameters to be reported or more frequent reporting. Ecology prefers web based data entry, but does accept hard copies. Ecology will provide forms and electronic data entry information.

Chapter 173-173 WAC describes the requirements for data accuracy, device installation and operation, and information reporting. It also allows a water user to petition Ecology for modifications to some of the requirements. Installation, operation and maintenance requirements are enclosed as a document entitled "Water Measurement Device Installation and Operation Requirements".

(Continued on page 3)

This permit shall be subject to cancellation should the permittee fail to comply with the above development schedule and/or to give notice to the Department of Ecology on forms provided by that Department documenting such compliance.

Given under my hand the seal of this office at Yakima, Washington,

this 15th *day of* SEPTEMBER *2003.*

Department of Ecology

by _____
Robert F. Barwin, Section Manager

DATA REVIEW
OK RM

Provisions Continued

Department of Ecology personnel, upon presentation of proper credentials, shall have access at reasonable times, to the records of water use that are kept to meet the above conditions, and to inspect at reasonable times any measuring device used to meet the above conditions.

D. Following each six-year period, Ecology will issue a certificate for the amount of water put to beneficial use during that period after an investigation has been conducted. Compliance with any Ecology Order issued as part of the water use associated with the six-year period is a requirement of the certificate for that six-year increment.

E. Unless a new instream flow rule for the mainstem Columbia River is promulgated and Ecology approves an application by the Quad Cities to substitute these flows as conditions to this water right, the following flow objectives will apply:

Water may be appropriated under this permit ONLY when the following minimum instream flow requirements are EQUALLED OR EXCEEDED, or when the consumptive water use associated with appropriations under this permit are fully mitigated:

1. Between April 10 and June 30, the minimum flow measured at McNary Dam will depend on the April-September runoff forecast at The Dalles Dam, such that:

   a. if the forecast is 80 million acre-feet (MAF) or less, the minimum flow is 220,000 cfs;

   b. if the forecast is greater than 80 MAF and less than 92 MAF, the minimum flow is 220,000+((40(forecast-80)/12) x 1000) cfs;

   c. if the forecast is greater than 92 MAF, the minimum flow is 260,000 cfs.

2. Between July 1 and August 31, the minimum flow measured at McNary Dam is 200,000 cfs.

3. From September 1 through October 31, the minimum flow measured at McNary Dam is 80,000 cfs.

4. Between November 1 and April 9, the minimum flow measured at Bonneville Dam will range from 125,000 to 160,000 cfs, with the specific flow objective to be set by the FCRPS Technical Management Team every two weeks during that period.

Any future proposed mitigation plans submitted by the Quad-Cities for review by Ecology shall be governed by the following terms:

- Mitigation for appropriations beyond the first ten cfs will be according to the following "fifty percent or more/fifty percent or less" formula: fifty percent or more of water consumptively used by the Quad Cities during times when flows established in Provision E are not met will be mitigated by flow replacement using water upstream of the McNary Dam in the Columbia River system; the balance of the mitigation will be accounted for by fish habitat improvements that benefit Columbia River system fish at least to the same extent as would replacement water.

- For any habitat project mitigation proposed by the Quad-Cities under this provision, the Quad-Cities will demonstrate based upon best available science and other applicable legal requirements that the proposed mitigation will benefit Columbia River system fish at least to the same extent as would replacement water.

- In determining whether any habitat project mitigation proposed under this provision is acceptable, Ecology will consult with and give a high degree of deference to the Washington State Department of Fish and Wildlife, the Confederated Tribes and Bands of the Yakama Nation, the Nez Perce Tribe, the Confederated Tribes of the Umatilla Indian Reservation, and the Confederated Tribes of the Warm Springs Reservation of Oregon.

- Any time Ecology approves the use of mitigation to offset diversion increments after the first increment (the first increment is defined as the first 10 cfs of diverted water), Ecology shall issue an order that is subject to appeal to the Pollution Control Hearings Board or any successor body with jurisdiction to hear appeals from Ecology water right decisions.

- To determine the amount of perpetual mitigation for the first increment of water use, Ecology has used an 80 percent consumptive use estimate; i.e., Ecology has assumed that for the first 10 cfs of diverted water, there will be a consumptive use of 8 cfs. Concurrent with the times that the Quad Cities submit each successive Regional Water Forecast and Conservation Plan (RWFCP) Ecology will reevaluate this 80 percent consumptive use estimate based on then-current metering and other data showing actual water returned to the system, and will assure that the appropriate amount of water-for-water mitigation is in place. If consumptive use increases above 80%, in order to keep the diversion for the first 10 cfs not subject to interruption, Ecology will transfer into trust additional water rights from the McNary Pool to offset the additional consumptive use.

LEGAL DESCRIPTION AND/OR PROVISIONS CONTINUED

F. If a new instream flow rule for the mainstem Columbia River is promulgated, the Quad Cities may apply to Ecology to have these new flows substituted as permit conditions for the above flows. The application must be in a form and manner that sufficiently explains the basis for the request and the effect of the request on public interest, existing rights and water availability. Upon approval by Ecology, the new flow objectives will replace the conditions described above. Until different instream flow objectives are established through formal rulemaking and Ecology approval of an application by Quad Cities to have these flows applied as new conditions to this water right, the flows set forth above shall remain in effect for the duration of this permit.

G. Based on the flow replacement mitigation agreed to be supplied by Ecology for the first six-year increment, the maximum water diversion allowed under this permit shall be 10 cfs. If additional water is required prior to 2008, the process to obtain it is the same as that described in Provisions E and H.

H. To access water beyond the initial 10 cfs, the Quad Cities shall submit an updated RWFCP to the Department of Health and the Department of Ecology on a six-year schedule consistent with the schedule for review of water right quantities. The Quad Cities shall coordinate the preparation and completion of their individual water system plans and related supply, demand, and conservation programs. Prior to completion of the plans, the RWFCP will be completed jointly by the Quad Cities to compare demand to available supply and to evaluate the conservation achieved and the conservation projected resulting from implementation of the program described in section 6. The Quad Cities may submit the RWFCP for access to additional water, under the same process described in this condition, prior to any six-year interval if demand forecasts or other circumstances warrant earlier review. The full quantities of water recommended for a permit in this report may be appropriated in six-year increments associated with submittal of the RWFCP, and only when the applicable minimum instream flow is equaled or exceeded, or when the consumptive water use associated with appropriations under this permit is mitigated. Ecology will review the demand estimates, the water conservation elements of the plan, return flows estimates, and other relevant information contained in the plan that comprises the mitigation or flow replacement proposal. Following public comment, Ecology would approve, conditionally approve, or deny the proposed mitigation plan through an Order. If the Order denies the proposed mitigation or flow replacement proposal, then the appropriation for that 6-year increment would be subject to interruption when the flow objectives in this permit are not met, as described in Provision E.

1. The non-interruptibility of water use beyond the first 10 cfs requires that the Quad Cities submit a mitigation plan to Ecology for approval. Unless extraordinary circumstances exist, when the Quad Cities propose a mitigation plan for future diversion increments under their water right, the Quad Cities will submit their plan at least one year before the Quad Cities need a final decision from Ecology. Ecology will use this one year period for public notice, consultation, and to accomplish any necessary water right trust transfers. For purposes of this section "extraordinary circumstances" is defined only as factual circumstances that establish the need for an Ecology response time of less than one year. In no case will Ecology shorten its review and decision time so as to preclude Ecology from fulfilling its public notice and consultation obligations. The mitigation required for withdrawals of water in the succeeding six-year periods shall be proposed by the Quad Cities in their six-year RWFCPs for approval by the Department of Ecology.

2. Upon issuance of an Order by Ecology approving, in conformance with Provision E of this permit, one or more trust water rights or approving another replacement water program or a mitigation program proposed by the permittee to offset the full projected consumptive use during periods when flow objectives are not met, the six-year appropriation will not be conditioned as interruptible.

3. The maximum quantity of withdrawals of water requiring mitigation during the succeeding six-year periods will be presented in the RWFCPs and determined by subtracting estimated return flow from the maximum diversion amount. Return flow calculations shall be based on best available science and shall reflect seasonal conditions. During the course of that six-year period, actual quantities to be mitigated will depend on daily recording and monthly reporting of actual water use under this permit, return flow estimates corresponding to the season of water use, and whether or not the then current flow objectives are achieved during that period.

4. Each RWFCP shall include a Conservation Program demonstrating how the best available and reasonable conservation technology will be implemented in the subsequent six-year period. The Conservation Program shall meet, as a minimum for the entire life of this permit, current (as of date prepared) Department of Health requirements as well as the conservation conditions described below. In addition, the RWFCP with its Conservation Program shall be submitted to the Department of Ecology for review and approval consistent with the six-year schedule for reviewing water rights. The RWFCP shall propose and implement water conservation activities in the following areas: reducing leakage and unaccounted for water from the municipal water supply system; and monitoring, accounting for (separately) and reducing commercial, industrial, residential (indoor) and landscape water use. The Conservation Program shall include a detailed profile of current water use characteristics for each conservation category defined above including their total annual demand, average demand, unit demand and peak demand. Compliance with the Conservation Program for each six year period shall be a condition of the permit.

5. The Quad Cities RWFCP shall comply with Department of Health rules (*Conservation Planning Requirements, Washington State Department of Health PUB 331-008, March 1994*) which currently require that these plans contain, as a minimum:

   - *Water Use Data Collection Requirements.* Systems must report the best currently available data on water use for the categories of use, which are identified by the department.

- *Water Demand Forecast.* A complete forecast, including an estimate of reduction of water use from implementation of water conservation measures, must be developed.
- *Conservation Program.* A Conservation Program must be developed and implemented. The Conservation Program elements must include: Conservation Objectives; Evaluation of Conservation Measures; and Identification of Selected Conservation Activities.

If the Department of Health adopts more stringent rules relating to water conservation, the Quads Cities will plan and implement their plans to meet or exceed the more stringent rules.

6. In addition to the general water conservation requirements described above, the following Conservation Program activities are required as conditions of this permit. The Quad Cities will initiate development of the following programs within one year after issuance of the permit and will adopt them for implementation within two years of the date of permit issuance.

   For the purposes of the following conservation program elements, the term "implement" means obtaining and expending funding for capital facilities and operational staff, program assessment, and monitoring and reporting associated with each program element in a manner and on a schedule to achieve, and once achieved to maintain, the stated goal or target.

   i. Leak Detection Program

   The Quad Cities shall implement a program to reduce leakage and unaccounted for water for each water supply system within the Quad Cities area. Leakage and unaccounted for water includes water loss due to leaking water mains and smaller distribution lines and inefficient fixtures, including inaccurate metering. Unaccounted for or unmetered water consumption also includes uses such as street sweeping, contractors, flushing hydrants, dust control, and erosion control by the Cities, County and private parties. The goal of the program is to reduce unaccounted for water to no more than 10% of the total diversion by 12/31/2010.The improvements to achieve the goal that are not concluded by 2010 must be identified and incorporated in the State approved Water System Plan for the city's capital improvement program with a completion date of no more than 2016.

   ii. Large Meter Testing Program

   The Quad Cities shall implement a program by December 31, 2005 to test all large meters (greater than 2-inches diameter, primarily used in commercial/industrial connections) and repair or replace all meters found to be defective. The testing and maintenance program will continue after the December 31, 2005 date on a schedule consistent with the manufacturer's recommendations.

   iii. Residential Meter Repair/Replacement Program

   The Quad Cities shall implement a program by December 31, 2005 to test and repair or replace all residential water meters on a schedule consistent with manufacturers' recommendations. The testing and replacement program will continue after the December 31, 2005 date on an appropriate schedule to ensure that the users meters are reasonably accurate.

   iv. Residential Retrofit Program

   The Quad Cities shall implement a residential retrofit program by December 31, 2004 to provide the public with low-flow shower heads, toilet tank displacement bags, leak detection tablets and other residential water conservation measures. The initial program will be completed by December 31, 2008.

   v. Source Metering Replacement and Improvement

   The Quad Cities shall implement a source metering replacement and improvement program by December 31, 2005 to ensure that all water sources are accurately monitored.

   vi. Develop a Water Audit Program for Large Water Users

   The Quad Cities shall develop and implement a water audit program for large (commercial, industrial and institutional) water users. At least 50% of the large water users will be audited by December 31, 2007 and the remainder of the audits completed by 2010. The water audit program shall continue on an ongoing repeat schedule for those large customers where the audit suggests that reasonable additional water use reduction is possible.

vii. **Develop a Joint Plan with Irrigation Districts to address Urban Area Irrigation Needs**

The Quad Cities shall pursue development of a Joint Plan with Irrigation Districts whose service areas overlap with the Quad Cities service area. The Plan shall address irrigation water supplies for landscape use (e.g., which entity supplies landscape water and Quad Cities policies on serving those areas) and landscape water demands during water-short periods when Irrigation Districts may prorate their water users. This plan will be completed by December 31, 2009.

viii. **Develop an Integrated Water Shortage and Drought Response Plan**

The Quad Cities shall develop an integrated Water Shortage and Drought Response Plan for periods when water demands exceed allowed diversions. This plan will be completed by December 31, 2007.

ix. **Develop a recommended School Education Program**

The Quad Cities will work with the school districts within the UGA for the Quad Cities to define appropriate classroom materials and assist the school districts with implementation of the program. The plan will be outlined and a recommended program be adopted for initial implementation by the cities within two years from the issuance of the permit. The implementation in the schools will be on the schedule approved by the school districts.

x. **Develop a General Public Education Program.**

The Quad Cities will develop a public education program as committed to in the Regional Water Supply Plan that will include outreach to all customers emphasizing the efficient use of both indoor and outdoor watering, consumptive use records on water bills, the promotion of water efficient devices such as low flow shower heads, and regional publications explaining conservation programs. This program shall be developed by December 31, 2005 and implemented on an on-going basis.

I. This permit herein recommended is specifically subordinate to any future permits that may be issued under applications No. S4-29956, S4-30052, R4-30102, S4-30185, S4-30465, and S4-30584.

Sandison, Derek

From: CBGWMA [cbgwma@televar.com]
Sent: Thursday, June 22, 2006 4:18 PM
To: Dennis Bly; Deral Boleneus; Ted Hopkins; Franklin County Commissioners; LeRoy Allison; Rudy Plager; Deborah Moore; Roger Hartwig; Richard Stevens; Jeff Stevens; Bob Derkey; Bill Wagoner; Roger Bailie; Deric Schmierer; Sandison, Derek; O'Keefe, Gerry; Gregory, Guy J. (ECY); Stoffel, Keith L. (ECY)
Cc: Terry Tolan; Kevin Lindsey (E-mail); Paul Stoker; Scott Cave; Ron Hull; Mark Nielson; David Lundgren
Subject: Confirmation of Ecology Leadership Meeting on July 13, 2006

This is to confirm that Ecology leadership, led by Gerry O'Keefe and Derek Sandison along with other Ecology leaders, have agreed to meet with the Boards of County Commissioners of Adams, Franklin, Grant and Lincoln Counties (GWMA Lead Agency) and the GWMA Administrative Board members to discuss GWMA's work with water issues, hydro-stratigraphy and the Columbia
River process. The date and location of the meeting has been set for Thursday, July 13, 2006 at 2:00 p.m. in the Othello City Hall, 500 Main Street, Othello, Washington. Please let us know if you will be able to attend this meeting.

An agenda is being prepared and will be forwarded to you prior to the meeting date. If you have any items you wish to have include on the agenda, please forward your suggestions to me by Friday, July 7, 2006.

Paul Stoker, Executive Director
Columbia Basin GWMA
449 E. Cedar Blvd.
Othello, WA 99344
509-488-3409
cbgwma@televar.com

Yakama Nation
Department of Natural Resources
Reply Attn: Phil Rigdon
PO Box 151
Toppenish, WA 98948

June 5, 2006

Derek Sandison
Department of Ecology
15 West Yakima Ave. Suite 200
Yakima, WA 98902-3452

RE: Columbia River Water Management Plan

Dear Mr. Sandison,

The Yakama Nation submits these staff-level scoping comments on the PEIS for Washington State's proposed Columbia River Water Management Plan (CRWMP). These comments do not express the policy positions of the Yakama Tribal Council.

The Yakama Nation is a holder of the most senior water rights in the Columbia River Basin. These rights have been exercised since time immemorial, were reserved by Treaty long before Washington State existed, and are the supreme law of the land. These rights have a time-immemorial priority date and have been successfully defended against many failed attempts to destroy them, including, sadly, ill-advised repeated attacks by the State of Washington.

The Yakama Nation's water rights are not subject to the jurisdiction of the State of Washington, but are protected by federal law and Treaty. These rights are part of the greater body of federal obligations to which the State of Washington's rights are junior. As such, the State of Washington has no authority to alter or undermine those rights. We submit these comments as the advice of a neighboring sovereign to help Washington manage its share of the Columbia River resources that it shares with the Yakama Nation.

In submitting these comments, the Yakama Nation does not waive any rights and does not submit any of its rights to regulation, quantification, or control by the State of Washington. The Yakama Nation reserves all rights, remedies and venues available to it for the resolution of disputes arising from the CRWMP.

The recent state legislation was enacted by excluding the senior right holders and, as such appears to be not so much a management plan as a loosely connected patchwork of special interest loopholes. From the scoping notice, it appears that Ecology has compounded the inadequacies of the legislation by adding in selected enticements for

out-of-stream users while omitting measures to protect and enhance Columbia River Salmon that are within the scope of Ecology's legislative authority. The result is not really a management plan. A management plan would begin with a legitimate assessment of needs, which was not done. A true management plan would not require dedicating two units of water to agriculture for each unit dedicated to meet the needs of the instream economy. CRWMP appears to be not a management plan, but an allocation plan for certain state special interests conceived of in a data-free process and in isolation from the legitimate needs of other uses and users in the Columbia River Basin.

As is all too often the case, the DS inappropriately draws a dichotomy between the needs of fish and "the economic and community development needs of people". To Indian people, who developed the first communities in the northwest around an economy dependent on salmon, this dichotomy is nonsensical and offensive. Just as the State must refrain from trading off the Tribal economies for non-Indian economic development, Ecology and its consultants should refrain from the offending and factually incorrect language separating "water for fish" from "water for people". Salmon are not some nicety, but a vital cultural, dietary, and, yes, economic need and right of Indian People. There is also a non-Indian instream economy based on the Columbia River fishery, an economy that is in dire need of support, for which the State of Washington owns a share of the responsibility, and which is neglected in the evolving CRWMP policy in favor of expanding subsidized agriculture.

The CRWMP PEIS is a Programmatic EIS in search of a program. Due to the patchwork nature of CRWMP and the DS, it is impossible to scope. An EIS is not the appropriate tool for developing a coherent policy. SEPA is intended to provide full disclosure of impacts related to policies and actions that have already been developed and described.

The PEIS should consider the potential benefits of operating FDR Lake for the benefit of instream resources. The scope should be changed to include this. In spite of its current emphasis on using storage to solve problems, the State has expressed an unreasoning fear of using the largest storage feature on the river to solve downstream flow problems. Although the reservoir is routinely drawn down to protect ill-advised floodplain development downstream, the State has expressed opposition to using much smaller drawdowns to benefit instream resources. This bias greatly hampers the potential effectiveness of CRWMP.

Ecology and its consultants should also refrain from the sort of economic "analyses" designed to deprecate the value of salmon. If similar analyses were legitimately applied to agriculture, including deducting subsidies and foregone opportunities, subsidized low-value agriculture would prove "infeasible" across the region. The scope of the EIS must be defined to properly consider economic impacts on fish and the fish based economies.

Washington State should embrace the full range of conclusions of the National Academy of Sciences (NAS) report rather than narrowly select only those that support the desires of would-be new out-of-stream water users. A fair reading of that analysis suggests that Ecology should not be permitting additional out of stream use without a full

understanding of the unmet needs of the full range of existing out of stream and instream uses. The PEIS needs to explain how the problems elucidated in the NAS report can be solved.

Ecology should consider the independent economic analysis performed by Texas A&M.

The CRWMP PEIS appears to be an example of piecemealing by the Lead Agency. Ecology is responsible to protect against piecemealing. Ecology should not limit its review but should consider the impacts on the full range of impacts to the natural habitat. How did this list get assembled? Where was the public process? Which parts of the non-project EIS are projects?

The scoping is also deficient in that it attempts to include action items or assumes that the action items will occur. This is not consistent with SEPA. The scoping, and any EIS, must consider a full range of items including no action.

Issuance of state water rights for new out of stream uses under CRWMP should not be described in the EIS as "new water" unless the water is being made available by retired consumptive use or water imported from out of basin. It should be described as a commitment of natural resources, and the impacts should be described accordingly.

Those portions of CRWMP involving federal actions will require NEPA analysis and ESA consultation and compliance. The Nation reserves its right to make further comments in the future on Ecology's compliance with NEPA and other federal laws and treaties.
It is impossible to scope anything as vague as a "Voluntary Regional Agreement". It is not possible to comment on this and we reserve the right to take action on VRA's as the details are made public.

Ecology has an obligation to fully disclose all impacts including cumulative impacts of CRWMP and related water regulation. This may prove difficult given the disjointed nature of the proposed program.

The EIS needs to make it clear what CRWMP does <u>not</u> do. For example, what is the fate of groundwater applications more than a mile from the Columbia River. How will Ecology address applications that are not part of a VRA? How does participation in a VRA affect the requirements for reaching a decision on a water right application? Failure to consider these is not in compliance with SEPA and other state and federal laws.

In conclusion, the Yakama Nation asks that the scoping be rewritten and readvertised as outlined above. The scope is too narrow in that it does not consider the effects on the natural environment.

Sincerely,

Phil Rigdon, Deputy Director
Yakama Nation Department of Natural Resources
<prigdon@yakama.com>

Sandison, Derek

From: Mike Kaputa [Mike.Kaputa@CO.CHELAN.WA.US]
Sent: Monday, June 05, 2006 4:01 PM
To: Barwin, Robert F. (ECY); Tebb, G. Thomas
Cc: Sandison, Derek; Buell Hawkins; Keith Goehner; Ron Walter
Subject: RE: Columbia River Partnership

Bob—

Here are some comments on the Columbia River Partnership EIS scoping from Chelan County. We appreciate Ecology's efforts to hold public workshops on the proposal and look forward to being involved in future discussions and decision-making.

1. It is not clear how different interests will be involved in developing the CRP, particularly with respect to the various committees that need to be assembled to generate various work products.
2. We are concerned that the timeline for completion of several work products is quite ambitious and will not likely allow for the appropriate level of local involvement in the CRP
3. We would like some clarification on trans-WRIA transfers and how direct Columbia River withdrawals will be treated with respect to WRIA boundaries

Please let me know if we can provide any more clarification.

Mike

Mike Kaputa
Director, Chelan County Natural Resource Department
316 Washington Street, Suite 401
Wenatchee, WA 98801
Desk: (509) 667-6584
Cell: (509) 670-6935
Fax: (509) 667-6527
website: www.co.chelan.wa.us/nr

Sandison, Derek

From: Yakibiker@aol.com
Sent: Sunday, June 04, 2006 9:49 PM
To: Sandison, Derek
Subject: Columbia River Management Program - EIS Scoping Comments

Dear Mr. Sandison-

Thank you for the opportunity to comment on the scope of the Columbia River Basin Water Management Program Draft EIS. In a nutshell, my concerns focus on two topics or themes I hope to see addressed in the Draft EIS. First, the Department has a fantastic opportunity to redefine how it communicates with its customers by using Governor Gregoire's Plain Talk principles in writing this environmental document. Second, the economic realities of high-priced water storage projects beg for clear explanation, in order to fully inform both our decision makers and an inquisitive, skeptical public. More detailed discussion of these themes follows.

First, I would encourage the Department to embrace Governor Gregoire's "Plain Talk" Executive Order (05-03) in the overall format and content of the draft EIS. Please take this opportunity to set a new, higher standard in clear government communication. As a citizen, I expect my local and state government offices to communicate with me in a clear, concise manner. Use pictures, graphics and visualizations to tell the story; use plain, everyday language; and consider using a question-and-answer format. For examples, you may want to contact the Washington State Department of Transportation, as the WSDOT has produced several reader-friendly environmental documents that have been well-received by both the general public and regulatory agencies.

Second, while Attachment A discusses trade-offs, it doesn't provide detail regarding cost/benefit analyses and opportunity costs. When considering alternatives under SEPA, the public will benefit from a robust economic analysis of the costs of off-stream projects, vs. conservation projects, vs. no action. Specifically, within the DEIS, decision makers should be fully informed as to design costs, construction costs, and operations and maintenance costs for new storage and transmission (conveyance) facilities. This request is based on the following sections of the SEPA (RCW 43.21C.030(2)(a) and (2)(b):

> The legislature authorizes and directs that, to the fullest extent possible: (1) The policies, regulations, and laws of the state of Washington shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all branches of government of this state, including state agencies, municipal and public corporations, and counties shall:
>
> (a) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and **social sciences** and the environmental design arts in planning and in decision making which may have an impact on man's environment;
>
> (b) Identify and develop methods and procedures, in consultation with the department of ecology and the ecological commission, which will insure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with **economic** and technical considerations;

Attachment A doesn't mention the opportunity costs of storage projects relative to conservation projects. This is troublesome, given that the enabling legislation, ESSHB 2860, seems to steer Ecology toward "the development of new water supplies that include storage and conservation…" The Department is, no doubt, under considerable political pressure to recommend construction of new storage facilities. If the draft EIS is intended to be written with a bias toward the dual debatable assumptions that "new water" exists and that additional storage is the answer, then this predetermination should be clearly stated within the document. Large volumes of water can be 'found' through conservation measures such

as canal lining or enclosure, and drip irrigation equipment.

Construction costs should be based on a realistic (i.e., peer-reviewed) discount rate given the anticipated year of construction. Apply opportunity costs over the life of storage and conservation projects by applying a realistic discount rate. Explain to the DEIS reader what the present and future value of each dollar buys us in terms of conservation or new storage. The economic realities of high-priced water storage projects beg for clear explanation to a questioning public.

I appreciate the effort the Department of Ecology has made to inform stakeholders by posting Attachment A, *Issues to be Addressed in EIS*, on the internet, to help reduce duplicative comments. Those topics cover many of the questions I had planned to ask in this letter. Thank you again for this opportunity to comment.

Larry Mattson
2810 Shelton Avenue
Yakima, WA 98902
509 577-1759

Sandison, Derek

From: Redmond, Jim [Jim.Redmond@simplot.com]
Sent: Friday, May 26, 2006 1:44 PM
To: Sandison, Derek
Subject: Columbia River Management Program

As a member of the board of trustees for the Columbia Basin Development League and very involved with the Water Initiative I am very interested and support any activities that can positively affect the Odessa Subarea. One area of interest that I support and should be considered is using municipal reclaimed water to enhance streamflows and groundwater irrigation supplies. I am under the impression that there is a possibility utilizing 50,000 acre-feet of reclaimed water from the City of Spokane which has the potential to be used in the eastern end (or further west with more funding) of the Odessa Subarea. This would be of huge value to the agriculture producers, food processors and the communities in the Columbia Basin which rely on the revenue created in the Odessa Subarea. Any such water would be useful to relieve some of the upgradient demand and useage in the Upper Crab Creek watershed allowing a more sustainable supply in the lower watershed. Thank you.

Jim Redmond
J.R. Simplot Co.
14124 Wheeler Rd.
Moses Lake, WA 98837

509-750-1532

Sandison, Derek

From: Holter, Russell (DAHP) [Russell.Holter@DAHP.WA.GOV]
Sent: Thursday, May 18, 2006 2:22 PM
To: Sandison, Derek
Subject: Columbia River Management Program

Derek,

As there could be significant impacts to above- and below-ground cultural resources the Department of Archaeology and Historic Preservation needs to be included in your consultation for this project. Specifically, we would like to know if you are planning to conduct a SEPA review? Is there a reason to review this action under Governor's Executive Order 05-05?

I look forward to hearing from you when you return from the field.

Russell Holter
Project Compliance Reviewer
Department of Archaeology and Historic Preservation
360-586-3533

CONFEDERATED TRIBES
OF THE UMATILLA
INDIAN RESERVATION

P.O. Box 638
73239 Confederated Way
Pendleton, Oregon 97801

Internet: www.umatilla.nsn.us

DEPARTMENT OF JUSTICE

Christopher Burford, Attorney General
Naomi Stacy, Deputy Attorney General
Brent Hall, Associate Attorney General

Phone: (541) 966 – 2030
Fax: (541) 278 – 7462
Email: patminthorn@ctuir.com

June 5, 2006

Derek Sandison
Department of Ecology
15 West Yakima Ave. Suite 200
Yakima, WA 98902

RE: Scoping Comments on the EIS For the Columbia River Basin Water Management Program

Dear Mr. Sandison:

In hopes to better advise my client, I suggest that Ecology focus on addressing the following issues throughout the development of the Columbia River Basin Water Management Program:

1. The impacts of each programmatic activity impacts CTUIR Treaty Rights on the Columbia River and affected tributaries. This analysis should include an analysis of the rights and activities concerning tribal fishing rights under the landmark case *United States v. Oregon*;
2. The degree to which each programmatic action would comport with the CTUIR Columbia River Salmon Policies and the plans of the Columbia River Intertribal Fish Commission fish restoration plans described in *Wy-kan-suh-mi Wa-kish-wit* (enclosed);
3. The consistency of each programmatic activity ensures statutory minimum instream flows for each of the Columbia River dam pools;
4. How each programmatic activity will comport with the requirement to protect Columbia River ecosystems and species protected by the Endangered Species Act and conform to the 2006 Federal District Court of Oregon rulings in *Northwest Wildlife Federation v. National Marine Fisheries Service*;
5. How any new uses of water will satisfy the basic requirements for a new water right described in RCW 90.03, 90.44 and 90.54.
6. How each program will ensure its activities are based upon sufficient information to support a reasonable analysis of the impacts.
7. When the State expects to engage in rulemaking for this project;
8. Plans to provide adequate information to the CTUIR for consultation as required in *Yakama Nation v. Department of Ecology*.

I look forward to hearing from you.

Most Sincerely,
/s/

Naomi Stacy

Department of Ecology
Columbia River Water Management Program EIS

SCOPING COMMENTS

Name:	GEORGE HILL
Company/Organization:	SPOKANE TRIBAL CULTURAL COMPLIANCE PROGRAM
Mailing Address:	P.O. BOX 100, WELLPINIT, WA. 99040
City, State, Zip:	
Email Address:	georgeh@spokanetribe.com

Please print your comment(s) below on the environmental impact statement:

THE RAMPING OF THE LAKE ROOSEVELT RESERVOIR WATER LEVEL CREATES EROSION ALONG THE BEACHES OF THE RESERVOIR THE EROSION CAN AND DOES EXPOSE CULTURAL RESOURCES, ESPECIALLY THE ANCESTRIAL BURIALS ALONG THE BEACHES. THE CULTURAL RESOURCES ARE SAFE (OR PRESUMABLY SO) WHILE COVERED BY SAND. ONCED EXPOSED BY EROSION THEY ARE OPEN TO VANDALISM.

THE LEVELS OF THE RESERVOIR ALSO IMPACT OUR SCOPE OF WORK. OUR BUSY SEASON IS FROM FEBRUARY TO JUNE. THE FLUCTUATION OF THE LEVELS AFTER JUNE WOULD REQUIRE OUR PROGRAM TO EXPEND MORE FUNDS FOR FIELD OPERATIONS BEYOND OUR NORMAL WORK ~~SCHED~~ SCHEDULE. OUR ARPA PATROL WOULD HAVE TO BE EXTENDED INTO THE SUMMER.

A SCHEDULE OF DRAWDOWNS WOULD HELP US TO PLAN OUR YEARLY WORK SCHEDULES.

Date Received: _____
Outreach Staff: _____
Page ___ of ___

[04.19.06]

Department of Ecology
Columbia River Water Management Program EIS

SCOPING COMMENTS

Name:	MOORE, DONNALEE
Company/Organization:	Political Candidate: Chelan County
Mailing Address:	311 FISHER ST.
City, State, Zip:	CASHMERE, WA. 98815-1252
Email Address:	donnaleeccff@yahoo.com

Please print your comment(s) below on the environmental impact statement:

SEPA PROGRAM CHARTS of ODESSA SUBAREA SPECIAL STUDY STATES WATER depths based on information from 1968 to 1981.

I feel we need to have more current stats. Ideally from the last 5 years vs. 25 yrs.!

Especially for charts and presentation to U.S. Senators & Congressman in WA D.C.!

Thank you for your time.

Donnalee Moore

Date Received: _____
Outreach Staff: _____
Page ___ of ___

[04.19.06]

Department of Ecology
Columbia River Water Management Program EIS

SCOPING COMMENTS

Name:	Andrew Kunath
Company/Organization:	Lake Roosevelt Forum
Mailing Address:	2206 S Sherman ST
City, State, Zip:	Spokane, WA 99203
Email Address:	info@lrf.org

Please print your comment(s) below on the environmental impact statement:

I would like to know what studies have, or could be done, to consider raising the level of Lake Roosevelt by raising the height of Grand Coulee Dam. Currently, the lake rises to 1290 by July and is then drawn down to 1274 by mid-August. Raising the lake to 1292 would allow an increase in critical low flow draw down in August. Because BOR and the tribes already "own" the shoreline, the number of private property owner issues is negligible. Further backing of water into Canada for a one month period does require investigation but is likely to be minimal impact as well. This idea may be far more cost effective than building of a new storage project.

Date Received: _____
Outreach Staff: _____
Page ___ of ___

[04.19.06]

Department of Ecology
Columbia River Water Management Program EIS

SCOPING COMMENTS

Name:	Scott L Simmons
Company/Organization:	New Resources Inc
Mailing Address:	127 N Wynne Street
City, State, Zip:	Colville WA 99114
Email Address:	scttsmmns@yahoo.com

Please print your comment(s) below on the environmental impact statement:

(1) The current salmon drawdown in July-August is destroying the carp spawning in the Kettle River backwaters. They are a Food Source for bull trout etc.
(2) Additionally it is also having a negative impact on columbia spotted frog survival rates.
(3) In order to stop these impacts the storage for the drawdown must be located above Grand Coulee Dam to maintain 1290 levels to restore carp and spotted frogs.

Date Received: _____
Outreach Staff: _____
Page ___ of ___

Department of Ecology
Columbia River Water Management Program EIS

SCOPING COMMENTS

Name:	Chris Lyle
Company/Organization:	Washington Association of Wheat Growers
Mailing Address:	2100 N. Oswald Rd.
City, State, Zip:	Ritzville, WA 99169
Email Address:	ctlyle@hotmail.com

Please print your comment(s) below on the environmental impact statement:

WAWG supports completion of the Columbia Basin Project. Conserving water in the Odessa Sub-Area is a public benefit for municipal and industrial uses. Efforts to complete the "project" in order to reduce groundwater declines are long over due!

Date Received: _____
Outreach Staff: _____
Page ___ of ___

[04.19 06]

Department of Ecology
Columbia River Water Management Program EIS

SCOPING COMMENTS

Name:	MERRILL OTT
Company/Organization:	Stevens County Commissioners
Mailing Address:	215 S. OAK ST. #214
City, State, Zip:	Colville, WA 99114
Email Address:	mott@co.stevens.wa.us

Please print your comment(s) below on the environmental impact statement:

(1) During this process, ensure county commissioners are present, not just invited, at the table for discussion, planning, and implementation of the program when it gets to this point.
(2) Analyze any proposed actions in light of impact to entire region, including Canada + other western states in relation to flow adjustments - consider the review of the submitted testimony by the Spokane tribe to Judge Redden (Will submit shortly, w/ Tribe's permission)
(3) Consider raising height of Banks Lake a foot, or other facilities by additional structure - study feasibility.
(4) Ensure entire watershed planning units in the whole region are informed/involved. Should be considered w/ possible new storage projects w/in their watersheds for smaller storage projects which can help mitigate low flows.
(5) Review the tribal contracts/MOUs - I would suggest having other officials knowledgeable of Low DOE & negotiating w/ Spokane's or Colvilles. There seems to be some controversy regarding payments for water when ~~it~~ it is questionable whether the tribes have ownership of the water.
(6)

Date Received: _____
Outreach Staff: _____
Page ___ of ___

[04.19.06]

Department of Ecology
Columbia River Water Management Program EIS

SCOPING COMMENTS

Name:	Cathy LeBret
Company/Organization:	Rep. Cathy McMorris
Mailing Address:	555 S. Main Street
City, State, Zip:	Colville, WA 99114
Email Address:	Cathy.LeBret@Mail.house.gov

Please print your comment(s) below on the environmental impact statement:

Further Consideration / mitigation must be considered for upper Lake Roosevelt if water is drawn down below 1280 in the Summer months when Tourism is at its peak. Exposed lake bed during a 1.5 mill. visitation will create Archeologic Exposures/Incidents, motorized Vehicles trespass, lack of Boat access to the Lake in the Northern Reaches on the Natl Park Service managed facilities.

? How will exposed sediments/Beaches during Peak tourist visitation mesh with the current Health Questions from the current Superfund RIFS?

? What do you plan on doing to Engage the County Commissioners that adjoin the LAKE in this process.

? Will you work on the Same type of MOU with the Counties that you have with the Colvilles?

? The Same Question As Above for the Spokanes?

? The Colville tribe does not have a saleable water right to Lake Roosevelt - How can you work out an M.O.U. to purchase water from any entity that doesn't own it to begin with.

? Why don't we study Raising the Height off Coulee Dam.

1 We should not be taking any water out of Lake Roos. until the facilities have been Built to Hold the WATER. That would Alleviate Needing to take WATER out in August. STORE the Spring Flood Control WATER.

Date Received: _____
Outreach Staff: _____
Page 1 of 2

[04.19.06]

Department of Ecology
Columbia River Water Management Program EIS

SCOPING COMMENTS

Name:	
Company/Organization:	
Mailing Address:	
City, State, Zip:	
Email Address:	

Please print your comment(s) below on the environmental impact statement:

Deawdowns at differant times of the YEAR detrimentally impact the Resident Sport fishery in LAKE Rodseveit. This is a mitigATION program for loss of the Salmon FISHERY. Are you going to mitigATE for the current mitigATION.

Date Received: _____
Outreach Staff: _____
Page 2 of 2

[04.19.06]

ENGROSSED SECOND SUBSTITUTE

HOUSE BILL 2860

ENGROSSED SECOND SUBSTITUTE
HOUSE BILL 2860
CHAPTER 6, LAWS OF 2006,
59th LEGISLATURE
COLUMBIA RIVER BASIN WATER SUPPLY
EFFECTIVE DATE 7-01-06

PUBLIC HEARING
May 18th, 2006
Colville, Washington

PUBLIC HEARING held at the request of the Department of Ecology, MOLLY GIBBS, before Betty A. Sitter, a notary public, at 317 W. Aston, Colville Agricultural Trade Center, Spokane, Washington, commencing at or about 4:00 p.m., May 18, 2006, pursuant to the Washington Rules of Civil Procedure.

P-U-B-L-I-C T-E-S-T-I-M-O-N-Y

MR. RUSS LARSEN: I've been a member of the Colville River Watershed ever since it started up here for six years, and I feel that if we are going to open up this basin on instream flows we are going to have to have instream storage projects to hold the water so that we can keep the instream flow up.

That's really about all my comments.

I'm glad that this passed the legislature and I think this Act here will be one of the greatest opportunities Eastern Washington has ever had.

Of course we are also trying to get our management completed by having an adjudication up here, but we feel we are going to probably be put on the back burner because the North Idaho legislature okayed the adjudication.

The Idaho legislature adjudicated the North Idaho area that they don't have adjudicated yet, and, of course, that affects the three basins in Northeast Washington, the Pend Oreille Basin and the Palouse Basin and the Spokane Basin, will probably go ahead of us.

I would prefer that we could go ahead with our adjudication, and that hopefully if the Department of Ecology would put enough personnel on, they could do

those adjudications and our adjudication at the same time.

I guess that's all I really have to say, I guess.

Thank you for giving me the opportunity to comment on this. Closing the basin with so little public input and so quickly back in 1977, was a disservice to the citizens of the Colville River Basin. If we would have had a six year study to open it up like we are now, I feel this basin would have never got closed.

A closed basin is where you cannot get a surface water right or a ground water right from the Department of Ecology because they say it is over appropriated by the rights that are on paper, but the Department of Ecology failed to study. And, of course, I was a Water Master in 1977 up in this basin, and the people in charged knew that approximately 20 percent of these rights at that time, that were only being used, and in our study we found, now, that only 12 1/2 percent of the rights are being used.

So this makes adjudication very, very meaningful here to get rid of the dead rights.

This is very important so we know within instream flows we will now how much water we can appropriate then.

Having a closed basin affects everybody. It

affects municipal projects, like for example the City of Chewela has put in for 1600 gallons per minute for some wells, but with a closed basin, they will not get it to open -- not get it approved unless the basin is open. In fact, as we understand it, you must have a water right permit even to store water in this basin, and they will not issue a storage permit unless your basin is open.

So I feel that this is very, very important, and our community feels that this is very, very important.

Also in our basin, this is kind of like pie in the sky, but if we had a series of these storage dams, there is a chance that we could generate electricity on these little dams and then hopefully the PUD would have that responsibility, and even if they could not use it for their customers, it could be sold to Avista for reduction in their customer rates.

I think that's about it.

There is applications that have been applied for during the closure in 1977 and on, that can't be acted upon until the basin is open. And these include municipal and agricultural rights.

That's all.

(Public testimony concluded.)

STATE OF WASHINGTON)
) ss: REPORTER'S CERTIFICATE
COUNTY OF SPOKANE)

I, BETTY A. SITTER, Certified Shorthand Reporter and Notary Public in and for the State of Washington;

DO HEREBY CERTIFY:

That the foregoing is a true and correct transcription of my shorthand notes as taken upon the Proceedings on the date and at the time and place as shown on page one hereto;

That the witness was sworn upon his oath to tell the truth, the whole truth and nothing but the truth, and did thereafter make answers as appear herein;

That I am not related to any of the parties to this litigation and have no interest in the outcome of said litigation;

WITNESS my hand and seal this June 9th, 2006.

_____
Notary Public in and for the State of Washington, residing in Spokane.

50c0791c-9147-4cb3-a918-87943339d21d

COLUMBIA RIVER WATER MANAGEMENT PROGRAM

ENVIRONMENTAL IMPACT STATEMENT

OPEN HOUSE

May 23, 2006

4:00 p.m. - 7:00 p.m.

Three Rivers Convention Center

7016 West Grandridge Boulevard

Kennewick, Washington

BRIDGES & ASSOCIATES
Certified Shorthand Reporters
P.O. Box 5999
Kennewick, Washington 99336
(509) 735-2400 - (800) 358-2345

(Public hearing opened.)

(Oral comments.)

--oo0oo--

FRANK LYALL: My name is Frank Lyall from the Washington Growers Clearinghouse.

And I just want to say initially that farmers empirically are ecosystem managers and many with many decades of experience, some with half a century of experience.

Our comments on this, are they supposed to be specifically to water law or is it any environmental impact in the -- from the Columbia Basin Initiative or what? Is there any parameters?

(Discussion held off the record.)

FRANK LYALL: I'll continue. Basically, I want to say that there's a lot of regulation by the Department of Ecology that's driving farmers off of their land, especially having to do with ag burning and spray buffers. And the net result of that is that as it becomes more difficult for these farmers to continue, that you could look forward to the Columbia River being lined with subdivisions of trophy cabins and pads for big box stores. You can see this going on right now north of Wenatchee

along the river in the Chelan area. It's only going to get worse.

If, you know, property rights are -- if there's an attempt to regulate those rights through law and to transferability or what you can do on the land, I think it just begets property rights initiatives like you're seeing what's going to be on the ballot this fall or that was passed, actually, in Oregon.

But most likely the Columbia River in 10, 20, 30 years hence is going to look a lot different today in that most of those farmers are going to be gone and what you're going to see is development. And for the most part, that development, I think, is harder on the ecosystem than the farms are. There tends to be more runoff and more runoff of significant chemicals off of developed land or urban areas.

The second thing I wanted to speak about regarding the Columbia Basin Initiative is how the globalization of ecosystem is going to affect the Columbia River. And that is these spray buffers become literal weed banks along the Columbia where there's a whole plethora of invasive weed species, many from the Mediterranean, from Mongolia, and other parts of world. Some good examples are Kochia, puncture vine, nap weed Canadian thistle. And the worst weeds often tend to drive

out weeds that were bad enough as they are, but where you have now Kochia driving out tumbleweeds, which is generally an unfavorable turn of events.

And these weed banks, as you can't spray them, they tend to provide a source of seed that moves inland which, ironically, will increase the use of pesticides and expenditure of energy to eliminate these weeds outside of the buffered zones. Or also these areas provide, it's not just weeds, but also invasive insects such as apple maggots or -- and it's also a potential public health issue with mosquito borne diseases.

Ironically, organic farmers are in the most jeopardy from these literal weed banks since they won't have conventional pesticides to fight these off. But overall what it's meant to the ecosystem of the Columbia River Basin is that these invasive species have changed the landscape that we've had the last 10,000 years, and it's something that I don't think the Department of Ecology seems oblivious to in that they need to consider whether it's, you know, a few billion parts of -- or a few parts per billion of pesticides in their water might be preferable to the spread of these invasive weed species and the change in the ecosystem as it's been the last 10,000 years.

The third thing I'd like to say is, there again,

is that if these farmers don't have a consistent, ample water supply, there again, they will be inclined to be forced off the land or will be inclined to leave prematurely and you will see increased development.

It's very unlikely that these farmers are going to leave these pieces of property and that that farm will just go fallow. Most likely it will be houses. And that kind of wraps up what I have to say.

(Public hearing closed.)

* * *

STATE OF WASHINGTON)
) ss.
COUNTY OF BENTON)

I, Susan J. Millay, do hereby certify that at the time and place heretofore mentioned in the caption of the foregoing matter, I was a Certified Court Reporter and Notary Public for Washington; that at said time and place I reported in stenotype all proceedings had in the foregoing matter; that thereafter my notes were reduced to typewriting and that the foregoing transcript consisting of 5 typewritten pages is a true and correct transcript of all such proceedings had and of the whole thereof.

I further certify that I am herewith securely sealing the said original transcript and promptly delivering the same to Judy Beitel.

Witness my hand at Kennewick, Washington, on this 23rd day of May, 2006.

Susan J. Millay, CCR/RPR
Certification No. 2743
Certified Court Reporter
Notary Public for Washington
My commission expires May 9, 2008

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COLUMBIA RIVER WATER MANAGEMENT PROGRAM

ENVIRONMENTAL IMPACT STATEMENT

OPEN HOUSE

ORIGINAL

ORAL COMMENTS

May 22, 2006

701 E. Third Avenue, Fire Department Multipurpose Room

Moses Lake, Washington

Reported by: Cathy S. Olsen, CCR
Certification No. 1929

MR. JACK FIELD: My name is Jack Field. I am the executive vice president of the Washington Cattlemen's Association. And we are just putting some questions forward regarding the endangered species information here for the Columbia River Initiative, or I don't know what the exact title is.

The questions we had would be what type of research and economic impact studies would be done in terms of the Chinook salmon, steelhead, Chum salmon, Coho salmon, Sockeye salmon, bull trout, bald eagle, the Pygmy rabbit, and then the Ute ladies'-tresses, and the Spalding silene, the endangered or threatened species or plants that are within the geography of the Columbia River program.

We have got several concerns regarding the impacts that private landowners have already taken under these said species.

We would just like to have a clear explanation as to how this program will further impact or possibly mitigate prior impacts that private landowners will have.

I guess if we could have some type of a written comment or response as to how they are going to proceed with potential construction or the program, understanding that the majority of these species are endangered already, just one of the big questions. And I think that's probably it right now. The concerns being with the species, wondering

how much more studying and how much more money we are going to throw at endangered species and virtually get zero return on our investment. Trying to find a way to use an incentive-based program to reward private landowners for sound stewardship or management to enhance habitat or actual species.

And we would be very much interested in having that dialog with the Department of Ecology or Department of Fish and Wildlife at their convenience. Thank you.

MR. MARK BOOKER, ECBID Director: The ECBID is the Eastern Columbia Basin Irrigation District. Looking at all these stations, I believe there's more recreation possibilities than anyone has thought of, so we should look into all kinds of recreation, wildlife, to draw persons out of the city to have fun in the country because that's what they want to do.

MR. PEARSON BURKE, Union Elevator & Warehouse Company: I feel that one of the main things that needs to be protected is the economic feasibility and opportunity that this area has. And hopefully that all of this, by preserving the water, or at least by using it more efficiently for all purposes, would be able to ensure the economy of this area because without it, if we lose the water, as we're doing right now because of the decreasing water table of the sub-Odessa aquifer, you are putting at

risk the businesses in this area, you are putting at risk the communities in this area. And unless something is done, it's going to happen sooner than what people realize.

I think it's important to protect the environment, but it almost seems that the environment has been too heavily weighted. We have a recent example in which I believe a judge ordered a release of water, which had the value through electricity of about 100 million dollars. And in essence they figured that that spring release saved 360 salmon.

There has to be some common sense. If this program or this policy process is able to avert decisions like this in the future, I think it's going to benefit everybody.

When you are dealing with the potential crisis that we are in this area, we really cannot afford to be waiting for this crisis to get worse. So far it's manageable, but we are not that far away from having a real crisis.

So hopefully this is a start of a process in which we can cut through some of the red tape and cut through some of the obstacles in order to ensure we have an adequate amount of water for future use in order to ensure the quality of life in this area. That's about all I have.

REPORTER'S CERTIFICATE

I, CATHY S. OLSEN, Certified Court Reporter, do hereby certify:

That the foregoing proceedings were taken before me at the times and place therein set forth;

That the testimony and all objections made were recorded stenographically by me and were thereafter transcribed by me or under my direction;

That the foregoing is a true and correct record of all testimony given, to the best of my ability;

That I am not a relative or employee of any attorney or of any of the parties, nor am I financially interested in the action;

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal this 7th day of June, 2006.

Cathy SOlsen

CATHY S. OLSEN, CCR
CCR # 1929
Notary Public in and for the State of Washington, residing at Wenatchee.

My commission expires on November 1, 2009.

DEPARTMENT OF ECOLOGY

WATER RESOURCES/QUALITY PROGRAM

* * *

OPEN HOUSE INFORMATIONAL MEETING

HELD: MAY 17, 2006 - 4:00 - 7:00 P.M.

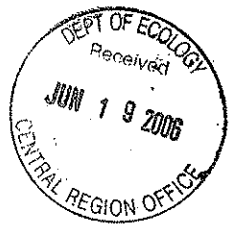
201 NORTH WENATCHEE AVENUE

WENATCHEE, WASHINGTON

Reported by:

Jennifer McLeod

CCR NO. 2156



The following statements were made on the record in regards to the information supplied by the Department of Ecology on May 17, 2006.

* * *

MS. FENNELLE MILLER: I'm with the Spokane Tribe culture program. I'm an archeologist. Spokane Tribe has not been consulted with about this project; and that means government to government consultation as mandated by Executive Order 05-05 and the Centennial Accord Agreement. And as such, I personally don't believe that the scoping period should end June 5. It should end when the Spokane Tribe has been consulted with by ecology, as the ecology has initiated consultation.

My specific concerns as a technical representative of the Spokane Tribe, our cultural resources, it does not appear that cultural resources have been given adequate consideration to date. And on behalf of the Tribe, I strongly recommend that in-depth intensive investigations of each of the alternative storage sites is conducted. And this needs to be more than record searches because the records only contain information about sites where people have looked for them. And for the most part, none of these lands under consideration as storage sites have been surveyed for archeology.

Furthermore, there may be areas in the project in which the Spokane Tribe has traditional cultural properties including root-digging grounds. And the Spokane Tribe also owns land on both the main stem of Columbia and the Spokane River, and as such, are co-managers of Lake Roosevelt. And every foot of drawdown in Lake Roosevelt negatively impacts cultural resources.

I also have concerns that this EIS is being done as a non project programmatic and there are three build project options in it. And according to my conversation with Ecology, these will be treated as non projects in the programmatic, and these must be specifically investigating on the ground for archeology.

I strongly recommend consultation between elected officials the governor representative and the tribal counsel of the Spokanes be initiated immediately and that the culture program also receive copies of all correspondence. Thank you.

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MS. DONNALEE MOORE: Donnalee Moore, Chelan county, the SEPA program. Charts of Odessa subarea special study states water depths based on information from 1968 to 1981. I feel we need to have more current stats, ideally

from the last five years versus 25 years ago, especially for charts and presentation to be brought to United States' senators and congressmen in Washington D.C.

As I was speaking to a gentleman down here with the charts of all the different counties throughout Washington State that are being studied, as a tenure rural volunteer firefighter with the Firefighter One training class with that, I have several concerns. I have brought these concerns up at some of the local meetings that might Mike Kaputa has organized.

In discussions of plans for storage tanks versus reservoirs, for example, the Blewitt Pass here in central Washington or in the mountainous areas in the greater Chelan County, many private old bridges are not built to accommodate heavy fire engines or tender trucks as well as the private roads. If you can get a tender truck to the reservoir, your suction port up on the side of the truck is approximately two feet from the ground.

I was taught in firefighting that the suction will only pump seven feet total. Then you lose your suction power, as in dribbling. Perhaps this is not feasible in the event of a fire storm or even for other applications. Thank you for your time.

CERTIFICATE

STATE OF WASHINGTON)

County of King)

I, the undersigned Notary Public in and for the state of Washington, do hereby certify:

That the annexed and foregoing statements of each person named herein was taken stenographically before me and reduced to typewriting under my direction.

IN WITNESS WHEREOF, I have hereunto set my hand and affirmed my Official Seal this 12th day of June, 2006.

Jennifer L. McLeod
CCR No. 2156
Notary Public in and for the
State of Washington,
Residing at Federal Way, Washington.
(Notary expires: 6/29/09)